From: Anderson, Cindy
To: Bennett, Karen
Subject: RE: CEI v. EPA (13-1074) invoices for text message billing for Gina McCarthy"s blackberry
Date: Wednesday, September 25, 2013 10:10:00 AM

Thanks Karen.

(b)(5) AWP, (b)(5) DP, (b)(5) ACP [redacted]

Cindy
564-2690

From: Bennett, Karen
Sent: Tuesday, September 24, 2013 5:49 PM
To: Anderson, Cindy
Subject: RE: CEI v. EPA (13-1074) invoices for text message billing for Gina McCarthy's blackberry

(b)(5) AWP, (b)(5) DP, (b)(5) ACP [redacted]

From: Anderson, Cindy
Sent: Tuesday, September 24, 2013 4:22 PM
To: Bennett, Karen
Subject: CEI v. EPA (13-1074) invoices for text message billing for Gina McCarthy's blackberry

Karen –

Thanks so much for pitching in to help with this project. (b)(5) DPP, (b)(5) AWP [redacted]

Please call or come by if you have any questions.

And, again, many thanks!

Cindy
564-2690

From: Anderson, Cindy
Sent: Thursday, September 19, 2013 4:29 PM
To: McDermott, Marna
Cc: Miller, Kevin
Subject: Friday meeting w/Kevin Miller: EPA Invoices for billing for Gina McCarthy's mobile device

Marna –

Kevin asked me to send the set of documents that are attached:

(b)(5) ACP, DPP [redacted]

Also below is some background information from EPA's contractor who is responsible for mobile device billing; she is in RTP and under OTOP.

Cindy
564-2690

From: DAVIS, TANIKA
Sent: Thursday, September 19, 2013 3:51 PM
To: Clark, Dee; Reilly, Tom
Subject: EPA Invoices

Here is a breakdown of what EPA receives monthly from the vendors:

AT&T

1. Remittance sheet sent to EPA Finance by AT&T Account Rep
2. Access to monthly data via the online portal
    a. ECS downloads the raw billing data that is used for workload and the PDF version of the invoice

Verizon

1. Remittance sheet sent to EPA Finance by Verizon Account Rep
2. Access to monthly data via online portal
    a. ECS downloads the raw billing data zip file that is used for workload and the PDF version of the invoice

T-Mobile

1. Paper invoice sent to EPA Finance
2. Access to monthly data via online portal
    a. ECS downloads the raw billing data only, no PDF version of the invoice available

Sprint

1. Paper invoice sent to EPA Finance

2. Access to monthly data via online portal
    a. ECS downloads zip file which includes PDF version of the invoice
3. Sprint Account rep send UAD raw data billing file to Tanika Davis monthly (used for workload)

Let me know if you have questions.

Tanika Davis
ECS Team - EPA ITS - ACT II Contractor
Sr. Telecommunications Billing Analyst
Information Management Group/Mobile Devices Business Office
Tel: (919) 541-1823
Fax: (919) 685-3118
Email: davis.tanika@epa.gov

~~~~~~
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All Other Locations - EPA Call Center at 866-411-4EPA or EPACALLCENTER@epa.gov

Act mindfully. Accept entirely. Move strongly. Think softly. Speak beautifully. Live simply. Love completely.
~~~~~~

From: Kelly, Lynn
To: Anderson, Cindy
Subject: RE: CEI v. EPA (13-1074) invoices for text message billing for Gina McCarthy"s blackberry
Date: Thursday, November 07, 2013 10:47:33 AM
Attachments: Pages from QA QC texts foia sha REVISED 10.22.13.pd (b)(5) DPP, (b)(5) AWP, (b)(5) ACP

Cindy, I couldn't figure out how to get all of the fields on each line on one page – but this might work for purposes of demonstration.

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: Anderson, Cindy
Sent: Thursday, November 07, 2013 9:55 AM
To: Kelly, Lynn
Subject: FW: CEI v. EPA (13-1074) invoices for text message billing for Gina McCarthy's blackberry
Importance: High

Lynn –

Thanks for offering to pdf a page from this Excel spreadsheet.

(b)(5) DPP, (b)(5) AWP, (b)(5) ACP [redacted]

Cindy
564-2690

From: Anderson, Cindy
Sent: Tuesday, September 24, 2013 4:25 PM
To: Bennett, Karen
Subject: CEI v. EPA (13-1074) invoices for text message billing for Gina McCarthy's blackberry

Karen –

Thanks so much for pitching in to help with this project. (b)(5) DPP, (b)(5) AWP [redacted]

Please call or come by if you have any questions.

And, again, many thanks!

Cindy
564-2690

From: Anderson, Cindy
Sent: Thursday, September 19, 2013 4:29 PM
To: McDermott, Marna
Cc: Miller, Kevin
Subject: Friday meeting w/Kevin Miller: EPA Invoices for billing for Gina McCarthy's mobile device

Marna –

Kevin asked me to send the set of documents that are attached:

(b)(5) DPP, (b)(5) AWP, (b)(5) ACP [redacted]

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Subject: EPA Invoices

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Let me know if you have questions.

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~~~~~~

From: Bennett, Karen
To: Anderson, Cindy; Albright, Scott
Subject: RE: CEI v. EPA (13-1074) invoices for text message billing for Gina McCarthy"s blackberry
Date: Tuesday, October 22, 2013 4:40:39 PM

I have a really hectic week through Friday (two pending litigation deadlines). It would make my life easier if I could work on this early next week. But if it needs to be done before then, I'll find a way to fit it in.

From: Anderson, Cindy
Sent: Tuesday, October 22, 2013 4:19 PM
To: Albright, Scott
Cc: Bennett, Karen
Subject: RE: CEI v. EPA (13-1074) invoices for text message billing for Gina McCarthy's blackberry

Thanks so much Scott!

Karen –
(b)(5) DPP, (b)(5) AWP, (b)(5) ACP [redacted]

Cindy
564-2690

From: Albright, Scott
Sent: Tuesday, October 22, 2013 4:17 PM
To: Anderson, Cindy
Cc: Bennett, Karen
Subject: RE: CEI v. EPA (13-1074) invoices for text message billing for Gina McCarthy's blackberry

(b)(5) AWP, (b)(5) ACP [redacted]. See attached.

thanks,

Scott Albright
U.S. EPA
Office of General Counsel
Information Law Practice Group
(202) 564-2884

From: Anderson, Cindy
Sent: Tuesday, October 22, 2013 4:09 PM
To: Albright, Scott
Cc: Bennett, Karen
Subject: RE: CEI v. EPA (13-1074) invoices for text message billing for Gina McCarthy's blackberry
Importance: High

Scott & Karen –

(Welcome back Karen!)

Thanks again to both of you for all your help on this messy matter.

(b)(5) DPP, (b)(5) AWP, (b)(5) ACP [redacted]

Thanks!

Cindy
564-2690

From: Albright, Scott
Sent: Friday, October 18, 2013 5:58 PM
To: Anderson, Cindy
Subject: RE: CEI v. EPA (13-1074) invoices for text message billing for Gina McCarthy's blackberry

Hi Cindy,

(b)(5) DPP, (b)(5) AWP, (b)(5) ACP [redacted]

Thanks,

Scott Albright
U.S. EPA
Office of General Counsel
Information Law Practice Group
(202) 564-2884

From: Anderson, Cindy
Sent: Friday, October 18, 2013 1:32 PM
To: Albright, Scott
Subject: FW: CEI v. EPA (13-1074) invoices for text message billing for Gina McCarthy's blackberry

(b)(5) DPP, (b)(5) AWP, (b)(5) ACP [redacted]

[redacted]

Thanks for your help!

Cindy
564-2690

From: Anderson, Cindy
Sent: Tuesday, September 24, 2013 4:25 PM
To: Bennett, Karen
Subject: CEI v. EPA (13-1074) invoices for text message billing for Gina McCarthy's blackberry

Karen –

Thanks so much for pitching in to help with this project. (b)(5) DPP, (b)(5) AWP [redacted]

Please call or come by if you have any questions.

And, again, many thanks!

Cindy
564-2690

From: Anderson, Cindy
Sent: Thursday, September 19, 2013 4:29 PM
To: McDermott, Marna
Cc: Miller, Kevin
Subject: Friday meeting w/Kevin Miller: EPA Invoices for billing for Gina McCarthy's mobile device

Marna –

Kevin asked me to send the set of documents that are attached:

(b)(5) DPP, (b)(5) AWP, (b)(5) ACP [redacted]

Also below is some background information from EPA's contractor who is responsible for mobile device billing; she is in RTP and under OTOP.

Cindy
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Sent: Thursday, September 19, 2013 3:51 PM
To: Clark, Dee; Reilly, Tom
Subject: EPA Invoices

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T-Mobile

1. Paper invoice sent to EPA Finance
2. Access to monthly data via online portal
    a. ECS downloads the raw billing data only, no PDF version of the invoice available

Sprint

1. Paper invoice sent to EPA Finance
2. Access to monthly data via online portal
    a. ECS downloads zip file which includes PDF version of the invoice
3. Sprint Account rep send UAD raw data billing file to Tanika Davis monthly (used for workload)

Let me know if you have questions.

Tanika Davis
ECS Team - EPA ITS - ACT II Contractor
Sr. Telecommunications Billing Analyst
Information Management Group/Mobile Devices Business Office
Tel: (919) 541-1823
Fax: (919) 685-3118
Email: davis.tanika@epa.gov
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All Other Locations - EPA Call Center at 866-411-4EPA or EPACALLCENTER@epa.gov

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~~~~~~

From: Albright, Scott
To: Anderson, Cindy
Cc: Bennett, Karen
Subject: RE: CEI v. EPA (13-1074) invoices for text message billing for Gina McCarthy"s blackberry
Date: Tuesday, October 22, 2013 4:16:46 PM
Attachments: QA QC texts foia sha REVISED 10.22.13.xlsx (b)(5) AWP, (b)(5) ACP

(b)(5) AWP, (b)(5) ACP. See attached.

thanks,

Scott Albright
U.S. EPA
Office of General Counsel
Information Law Practice Group
(202) 564-2884

From: Anderson, Cindy
Sent: Tuesday, October 22, 2013 4:09 PM
To: Albright, Scott
Cc: Bennett, Karen
Subject: RE: CEI v. EPA (13-1074) invoices for text message billing for Gina McCarthy's blackberry
Importance: High

Scott & Karen –

(Welcome back Karen!)

Thanks again to both of you for all your help on this messy matter.

(b)(5) DPP, (b)(5) AWP, (b)(5) ACP

(b)(5) DPP, (b)(5) AWP, (b)(5) ACP [redacted]

Thanks!

Cindy
564-2690

From: Albright, Scott
Sent: Friday, October 18, 2013 5:58 PM
To: Anderson, Cindy
Subject: RE: CEI v. EPA (13-1074) invoices for text message billing for Gina McCarthy's blackberry

Hi Cindy,

(b)(5) DPP, (b)(5) AWP, (b)(5) ACP [redacted]

Thanks,

Scott Albright
U.S. EPA
Office of General Counsel
Information Law Practice Group
(202) 564-2884

From: Anderson, Cindy
Sent: Friday, October 18, 2013 1:32 PM
To: Albright, Scott
Subject: FW: CEI v. EPA (13-1074) invoices for text message billing for Gina McCarthy's blackberry

(b)(5) DPP, (b)(5) AWP, (b)(5) ACP [redacted]

Thanks for your help!

Cindy
564-2690

From: Anderson, Cindy

Sent: Tuesday, September 24, 2013 4:25 PM
To: Bennett, Karen
Subject: CEI v. EPA (13-1074) invoices for text message billing for Gina McCarthy's blackberry

Karen –

Thanks so much for pitching in to help with this project. (b)(5) DPP, (b)(5) AWP [redacted]

Please call or come by if you have any questions.

And, again, many thanks!

Cindy
564-2690

From: Anderson, Cindy
Sent: Thursday, September 19, 2013 4:29 PM
To: McDermott, Marna
Cc: Miller, Kevin
Subject: Friday meeting w/Kevin Miller: EPA Invoices for billing for Gina McCarthy's mobile device

Marna –

Kevin asked me to send the set of documents that are attached:

(b)(5) DPP, (b)(5) AWP, (b)(5) ACP [redacted]

Also below is some background information from EPA's contractor who is responsible for mobile device billing; she is in RTP and under OTOP.

Cindy
564-2690

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Sent: Thursday, September 19, 2013 3:51 PM
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1. Paper invoice sent to EPA Finance
2. Access to monthly data via online portal
    a. ECS downloads the raw billing data only, no PDF version of the invoice available

Sprint
1. Paper invoice sent to EPA Finance
2. Access to monthly data via online portal
    a. ECS downloads zip file which includes PDF version of the invoice
3. Sprint Account rep send UAD raw data billing file to Tanika Davis monthly (used for workload)

Let me know if you have questions.

Tanika Davis
ECS Team - EPA ITS - ACT II Contractor
Sr. Telecommunications Billing Analyst
Information Management Group/Mobile Devices Business Office
Tel: (919) 541-1823
Fax: (919) 685-3118
Email: davis.tanika@epa.gov
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All Other Locations - EPA Call Center at 866-411-4EPA or EPACALLCENTER@epa.gov

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~~~~~~

From: Bennett, Karen
To: Anderson, Cindy
Subject: RE: CEI v. EPA (13-1074) invoices for text message billing for Gina McCarthy"s blackberry
Date: Thursday, October 24, 2013 4:59:04 PM
Attachments: QA QC texts foia sha REVISED 10 24 13.xlsx

(b)(5) AWP, (b)(5) ACP

I'll come by now.

From: Anderson, Cindy
Sent: Thursday, October 24, 2013 10:17 AM
To: Bennett, Karen
Subject: FW: CEI v. EPA (13-1074) invoices for text message billing for Gina McCarthy's blackberry

Karen –

Thanks so much for all your help on this!

Cindy
564-2690

From: Albright, Scott
Sent: Tuesday, October 22, 2013 4:17 PM
To: Anderson, Cindy
Cc: Bennett, Karen
Subject: RE: CEI v. EPA (13-1074) invoices for text message billing for Gina McCarthy's blackberry

(b)(5) AWP, (b)(5) ACP See attached.

thanks,

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U.S. EPA
Office of General Counsel
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From: Anderson, Cindy
Sent: Tuesday, October 22, 2013 4:09 PM
To: Albright, Scott
Cc: Bennett, Karen
Subject: RE: CEI v. EPA (13-1074) invoices for text message billing for Gina McCarthy's blackberry
Importance: High

Scott & Karen –

(Welcome back Karen!)

Thanks again to both of you for all your help on this messy matter.

(b)(5) DPP, (b)(5) AWP, (b)(5) ACP [redacted]

Thanks!

Cindy
564-2690

From: Albright, Scott
Sent: Friday, October 18, 2013 5:58 PM
To: Anderson, Cindy
Subject: RE: CEI v. EPA (13-1074) invoices for text message billing for Gina McCarthy's blackberry

Hi Cindy,

(b)(5) DPP, (b)(5) AWP, (b)(5) ACP [redacted]

Thanks,

Scott Albright
U.S. EPA
Office of General Counsel
Information Law Practice Group
(202) 564-2884

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To: Albright, Scott
Subject: FW: CEI v. EPA (13-1074) invoices for text message billing for Gina McCarthy's blackberry

(b) (5) DPP, (b) (5) ACP [redacted]

[redacted]

Thanks for your help!

Cindy
564-2690

From: Anderson, Cindy
Sent: Tuesday, September 24, 2013 4:25 PM
To: Bennett, Karen
Subject: CEI v. EPA (13-1074) invoices for text message billing for Gina McCarthy's blackberry

Karen –

Thanks so much for pitching in to help with this project. (b)(5) DPP, (b)(5) AWP [redacted].

Please call or come by if you have any questions.

And, again, many thanks!

Cindy
564-2690

From: Anderson, Cindy
Sent: Thursday, September 19, 2013 4:29 PM
To: McDermott, Marna
Cc: Miller, Kevin
Subject: Friday meeting w/Kevin Miller: EPA Invoices for billing for Gina McCarthy's mobile device

Marna –

Kevin asked me to send the set of documents that are attached:

(b)(5) DPP, (b)(5) AWP, (b)(5) ACP [redacted]

Also below is some background information from EPA's contractor who is responsible for mobile device billing; she is in RTP and under OTOP.

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Let me know if you have questions.

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From: Anderson, Cindy
To: McDermott, Marna
Cc: Miller, Kevin
Subject: Friday meeting w/Kevin Miller: EPA Invoices for billin[redacted]
Date: Thursday, September 19, 2013 4:28:00 PM
Attachments: 202-596-0247 - Message Detail - Jun 11-Aug 13.xlsx

(b)(5) DPP, (b)(5) AWP, (b)(5) ACP

Marna –

Kevin asked me to send the set of documents that are attached:

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From: Anderson, Cindy
To: Kelly, Lynn
Subject: FW: CEI v. EPA (13-1074) invoices for text message billing for Gina McCarthy"s blackberry
Date: Thursday, November 07, 2013 10:06:00 AM
Attachments: QA QC texts foia sha REVISED 10.22.13.xlsx
Importance: High

(b)(5) AWP, (b)(5) ACP

Thanks again Lynn!

[redacted]

Cindy
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Sent: Tuesday, October 22, 2013 4:17 PM
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Cc: Bennett, Karen
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(b)(5) AWP, (b)(5) ACP . See attached.

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Scott Albright
U.S. EPA
Office of General Counsel
Information Law Practice Group
(202) 564-2884

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Sent: Tuesday, October 22, 2013 4:09 PM
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Cc: Bennett, Karen
Subject: RE: CEI v. EPA (13-1074) invoices for text message billing for Gina McCarthy's blackberry
Importance: High

Scott & Karen –

(Welcome back Karen!)

Thanks again to both of you for all your help on this messy matter.

(b)(5) DPP, (b)(5) AWP, (b)(5) ACP

(b)(5) DPP, (b)(5) AWP, (b)(5) ACP [redacted]

[redacted]

[redacted]

[redacted]

[redacted].

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U.S. EPA
Office of General Counsel
Information Law Practice Group
(202) 564-2884

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Sent: Friday, October 18, 2013 1:32 PM

To: Albright, Scott
Subject: FW: CEI v. EPA (13-1074) invoices for text message billing for Gina McCarthy's blackberry

(b)(5) DPP, (b)(5) AWP, (b)(5) ACP [redacted]

[redacted]

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    a. ECS downloads the raw billing data that is used for workload and the PDF version of the invoice

Verizon

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Sprint

1. Paper invoice sent to EPA Finance
2. Access to monthly data via online portal
    a. ECS downloads zip file which includes PDF version of the invoice
3. Sprint Account rep send UAD raw data billing file to Tanika Davis monthly (used for workload)

Let me know if you have questions.

Tanika Davis
ECS Team - EPA ITS - ACT II Contractor
Sr. Telecommunications Billing Analyst
Information Management Group/Mobile Devices Business Office
Tel: (919) 541-1823
Fax: (919) 685-3118

Email: davis.tanika@epa.gov
~~~~~~
PLEASE NOTE If you require Mobile Device related assistance, please use the following contacts:
EZTech Locations - EPA Call Center 866-411-4372 (option 3) or EZTech@epa.gov
All Other Locations - EPA Call Center at 866-411-4EPA or EPACALLCENTER@epa.gov

Act mindfully. Accept entirely. Move strongly. Think softly. Speak beautifully. Live simply. Love completely.
~~~~~~

From: Anderson, Cindy
To: Bennett, Karen; Miller, Kevin
Subject: FW: CEI v. EPA (13-1074) invoices for text message billing for Gina McCarthy"s blackberry
Date: Friday, September 27, 2013 8:46:28 AM
Attachments: list of phone numbers McCarthy texted.docx
Importance: High

(b)(5) DPP, (b)(5) AWP, (b)(5) ACP

Karen - -

Thanks so much for doing this - and staying late to complete.
(b)(5) DPP, (b)(5) AWP, (b)(5) ACP

Cindy Anderson
EPA/OGC
(202) 564-2690

From: Bennett, Karen
Sent: Thursday, September 26, 2013 7:01 PM
To: Anderson, Cindy
Subject: RE: CEI v. EPA (13-1074) invoices for text message billing for Gina McCarthy's blackberry

Hello Cindy,
(b)(5) DPP, (b)(5) AWP, (b)(5) ACP
Best, Karen

From: Anderson, Cindy
Sent: Tuesday, September 24, 2013 4:22 PM
To: Bennett, Karen
Subject: CEI v. EPA (13-1074) invoices for text message billing for Gina McCarthy's blackberry

Karen –

(b)(5) DPP, (b)(5) AWP

Please call or come by if you have any questions.

And, again, many thanks!

Cindy
564-2690

From: Anderson, Cindy
Sent: Thursday, September 19, 2013 4:29 PM
To: McDermott, Marna
Cc: Miller, Kevin
Subject: Friday meeting w/Kevin Miller: EPA Invoices for billing for Gina McCarthy's mobile device

Marna –

Kevin asked me to send the set of documents that are attached:

(b)(5) DPP, (b)(5) AWP, (b)(5) ACP [redacted]

Also below is some background information from EPA's contractor who is responsible for mobile device billing; she is in RTP and under OTOP.

Cindy
564-2690

From: DAVIS, TANIKA
Sent: Thursday, September 19, 2013 3:51 PM
To: Clark, Dee; Reilly, Tom
Subject: EPA Invoices

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1. Paper invoice sent to EPA Finance

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a. ECS downloads zip file which includes PDF version of the invoice

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Let me know if you have questions.

Tanika Davis
ECS Team - EPA ITS - ACT II Contractor
Sr. Telecommunications Billing Analyst
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Tel: (919) 541-1823
Fax: (919) 685-3118
Email: davis.tanika@epa.gov<mailto:davis.tanika@epa.gov>
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EPACALLCENTER@epa.gov<mailto:EPACALLCENTER@epa.gov>

Act mindfully. Accept entirely. Move strongly. Think softly. Speak beautifully. Live simply. Love completely.
~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~

From: Anderson, Cindy
To: Albright, Scott
Cc: Miller, Kevin
Subject: FW: CEI v. EPA (13-1074) invoices for text message billing for Gina McCarthy"s blackberry
Date: Monday, October 21, 2013 8:47:18 AM
Attachments: QA QC texts foia sha.xlsx
Importance: High

(b)(5) DPP, (b)(5) AWP, (b)(5) ACP

Scott –

(b)(5) DPP, (b)(5) AWP, (b)(5) ACP

I'll set up a meeting with Lynn, you and me for later this afternoon.

Cindy
564-2690

From: Albright, Scott
Sent: Friday, October 18, 2013 5:58 PM
To: Anderson, Cindy
Subject: RE: CEI v. EPA (13-1074) invoices for text message billing for Gina McCarthy's blackberry

Hi Cindy,

(b)(5) DPP, (b)(5) AWP, (b)(5) ACP

Thanks,

Scott Albright
U.S. EPA
Office of General Counsel

Information Law Practice Group
(202) 564-2884

From: Anderson, Cindy
Sent: Friday, October 18, 2013 1:32 PM
To: Albright, Scott
Subject: FW: CEI v. EPA (13-1074) invoices for text message billing for Gina McCarthy's blackberry

(b)(5) DPP, (b)(5) AWP [redacted]

[redacted]

Thanks for your help!

Cindy
564-2690

From: Anderson, Cindy
Sent: Tuesday, September 24, 2013 4:25 PM
To: Bennett, Karen
Subject: CEI v. EPA (13-1074) invoices for text message billing for Gina McCarthy's blackberry

Karen –

(b)(5) DPP, (b)(5) AWP [redacted]

Please call or come by if you have any questions.

And, again, many thanks!

Cindy
564-2690

From: Anderson, Cindy
Sent: Thursday, September 19, 2013 4:29 PM
To: McDermott, Marna
Cc: Miller, Kevin
Subject: Friday meeting w/Kevin Miller: EPA Invoices for billing for Gina McCarthy's mobile device

Marna –

(b) (5) DPP, (b) (5) ACP [redacted]

[redacted]

Also below is some background information from EPA's contractor who is responsible for mobile device billing; she is in RTP and under OTOP.

Cindy
564-2690

From: DAVIS, TANIKA
Sent: Thursday, September 19, 2013 3:51 PM
To: Clark, Dee; Reilly, Tom
Subject: EPA Invoices

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Let me know if you have questions.

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All Other Locations - EPA Call Center at 866-411-4EPA or EPACALLCENTER@epa.gov

Act mindfully. Accept entirely. Move strongly. Think softly. Speak beautifully. Live simply. Love completely.
~~~~~~

From: Miller, Kevin
To: Anderson, Cindy
Subject: RE: CEI v. EPA (13-1074) invoices for text message billing for Gina McCarthy"s blackberry
Date: Monday, September 30, 2013 10:58:00 AM

(b)(5) DPP, (b)(5) AWP

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: Anderson, Cindy
Sent: Monday, September 30, 2013 10:56 AM
To: Miller, Kevin
Subject: RE: CEI v. EPA (13-1074) invoices for text message billing for Gina McCarthy's blackberry

(b)(5) DPP, (b)(5)

Cindy
564-2690

-----Original Message-----
From: Miller, Kevin
Sent: Monday, September 30, 2013 10:49 AM
To: Anderson, Cindy
Subject: RE: CEI v. EPA (13-1074) invoices for text message billing for Gina McCarthy's blackberry

(b)(5) DPP, (b)(5) AWP

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: Anderson, Cindy
Sent: Sunday, September 29, 2013 8:48 PM
To: Miller, Kevin; Minoli, Kevin; McDermott, Marna
Subject: CEI v. EPA (13-1074) invoices for text message billing for Gina McCarthy's blackberry
Importance: High

All -

(b) (5) DPP, (b) (5) ACP, (b) (5) AWP

Cindy Anderson
EPA/OGC
(202) 564-2690

From: Bennett, Karen
Sent: Thursday, September 26, 2013 7:01 PM
To: Anderson, Cindy
Subject: RE: CEI v. EPA (13-1074) invoices for text message billing for Gina McCarthy's blackberry

Hello Cindy,
(b) (5) DPP, (b) (5) ACP, (b) (5) AWP [redacted] I will be in all day tomorrow (and all of next week) if you have any questions.
Best, Karen

From: Anderson, Cindy
Sent: Tuesday, September 24, 2013 4:22 PM
To: Bennett, Karen
Subject: CEI v. EPA (13-1074) invoices for text message billing for Gina McCarthy's blackberry

Karen –

(b) (5) DPP, (b) (5) ACP, (b) (5) AWP [redacted]

Please call or come by if you have any questions.

And, again, many thanks!

Cindy
564-2690

From: Anderson, Cindy
Sent: Thursday, September 19, 2013 4:29 PM
To: McDermott, Marna
Cc: Miller, Kevin
Subject: Friday meeting w/Kevin Miller: EPA Invoices for billing for Gina McCarthy's mobile device

Marna –

Kevin asked me to send the set of documents that are attached:

(b)(5) DPP, (b)(5) ACP, (b)(5) AWP [redacted]

Also below is some background information from EPA's contractor who is responsible for mobile device billing; she is in RTP and under OTOP.

Cindy
564-2690

From: DAVIS, TANIKA

Sent: Thursday, September 19, 2013 3:51 PM
To: Clark, Dee; Reilly, Tom
Subject: EPA Invoices

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3. Sprint Account rep send UAD raw data billing file to Tanika Davis monthly (used for workload)

Let me know if you have questions.

Tanika Davis
ECS Team - EPA ITS - ACT II Contractor
Sr. Telecommunications Billing Analyst
Information Management Group/Mobile Devices Business Office
Tel: (919) 541-1823
Fax: (919) 685-3118
Email: davis.tanika@epa.gov<mailto:davis.tanika@epa.gov>
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EPACALLCENTER@epa.gov<mailto:EPACALLCENTER@epa.gov>
~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~

Act mindfully. Accept entirely. Move strongly. Think softly. Speak beautifully. Live simply. Love completely.

From: Anderson, Cindy
To: Miller, Kevin
Subject: RE: EPA Invoices for mobile device billing
Date: Friday, September 20, 2013 1:46:44 PM
Importance: High

(b) (5) DPP, (b) (5) AWP, (b) (5) ACP [redacted]

[redacted]

Cindy Anderson
EPA/OGC
(202) 564-2690

From: Miller, Kevin
Sent: Friday, September 20, 2013 1:17 PM
To: Anderson, Cindy
Subject: RE: EPA Invoices for mobile device billing

Cindy,

(b) (5) DPP, (b) (5) AWP, (b) (5) ACP [redacted] Marna wasn't in her office, so I have not spoken with her yet. Thanks.

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: Anderson, Cindy
Sent: Friday, September 20, 2013 1:11 PM
To: Miller, Kevin
Subject: RE: EPA Invoices for mobile device billing

[redacted]

(b) (5) DPP, (b) (5) AWP, (b) (5) ACP [redacted]

[redacted]

Thanks!

Cindy Anderson
EPA/OGC
(202) 564-2690

From: Miller, Kevin
Sent: Friday, September 20, 2013 12:56 PM
To: Anderson, Cindy
Subject: RE: EPA Invoices for mobile device billing

Cindy – (b) (5) DPP, (b) (5) AWP, (b) (5) ACP [redacted]?

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

From: Anderson, Cindy
Sent: Thursday, September 19, 2013 4:06 PM
To: Miller, Kevin
Subject: FW: EPA Invoices for mobile device billing

Kevin –

(b) (5) DPP, (b) (5) AWP, (b) (5) ACP [redacted]

Thanks!

Cindy
564-2690

From: Reilly, Tom
Sent: Thursday, September 19, 2013 3:57 PM
To: Anderson, Cindy
Subject: FW: EPA Invoices

See Tanika's comments below

From: DAVIS, TANIKA
Sent: Thursday, September 19, 2013 3:51 PM
To: Clark, Dee; Reilly, Tom
Subject: EPA Invoices

Dee & Tom,

Here is a breakdown of what EPA receives monthly from the vendors:

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2. Access to monthly data via online portal

a. ECS downloads the raw billing data only, no PDF version of the invoice available

Spring

1. Paper invoice sent to EPA Finance

2. Access to monthly data via online portal

a. ECS downloads zip file which includes PDF version of the invoice

3. Sprint Account rep send UAD raw data billing file to Tanika Davis monthly (used for workload)

Let me know if you have questions.

Tanika Davis
ECS Team - EPA ITS - ACT II Contractor
Sr. Telecommunications Billing Analyst
Information Management Group/Mobile Devices Business Office
Tel: (919) 541-1823
Fax: (919) 685-3118
Email: davis.tanika@epa.gov<mailto:davis.tanika@epa.gov>
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EPACALLCENTER@epa.gov<mailto:EPACALLCENTER@epa.gov>

Act mindfully. Accept entirely. Move strongly. Think softly. Speak beautifully. Live simply. Love completely.
~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~

From: Anderson, Cindy
To: Miller, Kevin
Subject: RE: EPA Invoices for mobile device billing
Date: Friday, September 20, 2013 1:26:43 PM
Importance: High

(b) (5) DPP, (b) (5) AWP, (b) (5) ACP [redacted]

[redacted]

Cindy Anderson
EPA/OGC
(202) 564-2690

From: Miller, Kevin
Sent: Friday, September 20, 2013 1:12 PM
To: Anderson, Cindy
Subject: RE: EPA Invoices for mobile device billing

(b) (5) DPP, (b) (5) AWP, (b) (5) ACP [redacted]

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: Anderson, Cindy
Sent: Friday, September 20, 2013 1:11 PM
To: Miller, Kevin
Subject: RE: EPA Invoices for mobile device billing

[redacted]

(b) (5) DPP, (b) (5) AWP, (b) (5) ACP [redacted]

[redacted]

Thanks!

Cindy Anderson
EPA/OGC
(202) 564-2690

From: Miller, Kevin
Sent: Friday, September 20, 2013 12:56 PM
To: Anderson, Cindy
Subject: RE: EPA Invoices for mobile device billing

Cindy – (b) (5) DPP, (b) (5) AWP, (b) (5) ACP [redacted]?

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

From: Anderson, Cindy
Sent: Thursday, September 19, 2013 4:06 PM
To: Miller, Kevin
Subject: FW: EPA Invoices for mobile device billing

Kevin –

(b) (5) DPP, (b) (5) AWP, (b) (5) ACP [redacted]

Thanks!

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564-2690

From: Reilly, Tom
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To: Anderson, Cindy
Subject: FW: EPA Invoices

See Tanika's comments below

From: DAVIS, TANIKA
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To: Clark, Dee; Reilly, Tom
Subject: EPA Invoices

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Let me know if you have questions.

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ECS Team - EPA ITS - ACT II Contractor
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Email: davis.tanika@epa.gov<mailto:davis.tanika@epa.gov>
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EPACALLCENTER@epa.gov<mailto:EPACALLCENTER@epa.gov>

Act mindfully. Accept entirely. Move strongly. Think softly. Speak beautifully. Live simply. Love completely.
~~~~~~

From: Miller, Kevin
To: Minoli, Kevin
Cc: Kelly, Lynn
Subject: CEI fee waiver
Date: Thursday, May 16, 2013 3:50:49 PM

Kevin,

Just so you are aware, we have a pending CEI fee waiver appeal that just came in. (b)(5) DPP [redacted] (b)(5)
It is for a denial of a fee waiver for their request for:

copies of all text messages[1] sent by Assistant Administrator for Air and Radiation Gina McCarthy on a mobile telephone provided for her use by the Agency, on the following, eighteen days:
2009: July 9, 2009; July 14, 2009
2010: July 22, 2010; March 4, 2010; March 24, 2010
2011: March 1, 2011; March 13, 2011; March 24, 2011; April 13, 2011; May 13, 2011; June 30, 2011; September 8, 2011; September 15, 2011; October 12, 2011; October 25, 2011
2012: February 28, 2012; June 19, 2012; June 29, 2012.

Lynn is going to work on this. Due date looks to be mid-June (June 13).

Kevin

From: Newton, Jonathan
To: Weinstock, Larry; Anderson, Cindy
Cc: Miller, Kevin; Minoli, Kevin; Wachter, Eric; McDermott, Marna
Subject: FW: HQ-2014-0002006 - Reassignment to OAR
Date: Monday, January 06, 2014 4:47:59 PM
Attachments: HQ-2014-002006 Request Letter.pdf

FYI

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: Newton, Jonathan
Sent: Friday, December 27, 2013 1:59 PM
To: Lewis, Monica; Hamilton, Sabrina
Cc: Gottesman, Larry
Subject: HQ-2014-0002006 - Reassignment to OAR

Hi Monica and Sabrina,

This is a request seeking text messages from twelve individuals: Joe Goffman (OAR); Janet McCabe (OAR); Margo Oge (OAR); Cindy Huang (OAR); Steve Page (OAR); Peter Tsirigotis (OAR); Mike Flynn (OAR); Curt Spalding (R1); Nancy Grantham (R1); Bob Perciasepe (AO); Scott Fulton (Formerly OGC); and Ira W. Leighton (Formerly R1).

(b)(5) DPP [redacted]

Thanks

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:	Minoli, Kevin
To:	Wynn, Renee; Noga, Vaughn
Cc:	Miller, Kevin; Albright, Scott; Kelly, Lynn
Subject:	FW: New CEI Litigation re: Alleged Failure to Preserve Text Messages
Date:	Thursday, October 17, 2013 3:04:00 PM
Attachments:	CourtLink_Document_US-DIS-DCD_1_13cv1532_Idx_541927_10.17.2013_103507958....pdf

Renee and Vaughn- Welcome Back! I wanted to make sure you were aware of this new case. We will keep you and your folks in the loop as it moves along. 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: Kelly, Lynn
Sent: Thursday, October 17, 2013 2:32 PM
To: Kika, Stacy
Cc: Johnson, Alisha; Minoli, Kevin; Miller, Kevin; McDermott, Marna
Subject: New CEI Litigation

Hi Stacy:

Below is a desk statement (and some further background) on a new FOIA case filed against the Agency by the Competitive Enterprise Institute (CEI). I am the OGC staff lead on the case and can answer any additional questions you may have. Thanks!

(b)(5) ACP, (b)

[redacted]

[redacted]

[redacted]

[redacted]

(b)(5) ACP, (b)(5) DPP

[redacted]

[redacted]

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: Kelly, Lynn
To: Newton, Jonathan; Wachter, Eric
Subject: FW: New CEI Litigation
Date: Thursday, October 17, 2013 3:03:00 PM

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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Sent: Thursday, October 17, 2013 2:32 PM
To: Kika, Stacy
Cc: Johnson, Alisha; Minoli, Kevin; Miller, Kevin; McDermott, Marna
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Hi Stacy:

Below is a desk statement (and some further background) on a new FOIA case filed against the Agency by the Competitive Enterprise Institute (CEI). I am the OGC staff lead on the case and can answer any additional questions you may have. Thanks!

(b)(5) ACP, (b)

[redacted]

[redacted]

(b)(5) ACP, (b)(5)

[redacted]

(b)(5) ACP, (b)(5) DPP [redacted]

[redacted] complaint and will work with the Department of Justice to respond to CEI's allegations.

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:	Miller, Kevin
To:	Minoli, Kevin
Subject:	FW: New FOIA lawsuit: Competitive Enterprise Institute v. United States Environmental Protection Agency 1:13cv779 D. DC
Date:	Wednesday, May 29, 2013 4:16:00 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

Kevin,

Attached is a copy of the new CEI complaint. This one is a failure to respond suit for the following request:

copies of all text messages sent by Assistant Administrator for Air and Radiation Gina McCarthy on a mobile telephone provided for her use by the Agency, on the following eighteen days:

2009: July 9, 2009; July 14, 2009
2010: July 22, 2010; March 4, 2010; March 24, 2010
2011: March 1, 2011; March 13, 2011; March 24, 2011; April 13, 2011; May 13, 2011; June 30, 2011; September 8, 2011; September 15, 2011; October 12, 2011; October 25, 2011
2012: February 28, 2012; June 19, 2012; June 29, 2012.

(b)(5) AWP

Kevin

From: Kelly, Lynn
To: Miller, Kevin
Subject: New CEI case paragraph draft
Date: Thursday, October 17, 2013 12:24:50 PM

(b)(5) AWP, (b)(5) ACP [redacted]

[redacted]

[redacted]

[redacted]

[redacted]

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: Minoli, Kevin
To: Garbow, Avi
Cc: Mallory, Brenda
Subject: New CEI Litigation Re: Alleged Failure to Preserve Text Messages
Date: Thursday, October 17, 2013 3:00:00 PM
Attachments: CourtLink_Document_US-DIS-DCD_1_13cv1532_Idx_541927_10.17.2013_103507958....pdf

---

(b)(5) AWP, (b)(5) ACP [redacted]

[redacted]

[redacted]

[redacted]

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

From: Kelly, Lynn
Sent: Thursday, October 17, 2013 2:32 PM
To: Kika, Stacy
Cc: Johnson, Alisha; Minoli, Kevin; Miller, Kevin; McDermott, Marna
Subject: New CEI Litigation

Hi Stacy:

Below is a desk statement (and some further background) on a new FOIA case filed

against the Agency by the Competitive Enterprise Institute (CEI). I am the OGC staff lead on the case and can answer any additional questions you may have. Thanks!

(b)(5) AWP, (b)

[redacted]

[redacted]

(b)(5) AWP, (b)(5)

[redacted]

[redacted]

[redacted]

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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use the information. Thank you.

From: Kelly, Lynn
To: Kika, Stacy
Cc: Johnson, Alisha; Minoli, Kevin; Miller, Kevin; McDermott, Marna
Subject: New CEI Litigation
Date: Thursday, October 17, 2013 2:32:13 PM

Hi Stacy:

Below is a desk statement (and some further background) on a new FOIA case filed against the Agency by the Competitive Enterprise Institute (CEI). I am the OGC staff lead on the case and can answer any additional questions you may have. Thanks!

(b)(5) AWP, (b)

[redacted]

[redacted]

(b)(5) AWP, (b)(5)

[redacted]

[redacted]

[redacted]

(b)(5) AWP, (b)

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: Miller, Kevin
To: Kelly, Lynn
Subject: RE: New CEI case paragraph draft
Date: Thursday, October 17, 2013 12:31:00 PM

(b)(5) AWP, (b)(5) [redacted]

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

From: Kelly, Lynn
Sent: Thursday, October 17, 2013 12:25 PM
To: Miller, Kevin
Subject: New CEI case paragraph draft

(b)(5) AWP, (b)(5) ACP [redacted]

[redacted]

[redacted]

[redacted]

[redacted]

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: Minoli, Kevin
To: Wynn, Renee
Subject: RE: New CEI Litigation re: Alleged Failure to Preserve Text Messages
Date: Thursday, October 17, 2013 3:37:00 PM

We still do need to grab a glass of wine at some point.... Maybe we can make a day next week work?

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

From: Wynn, Renee
Sent: Thursday, October 17, 2013 3:23 PM
To: Minoli, Kevin; Noga, Vaughn
Cc: Miller, Kevin; Albright, Scott; Kelly, Lynn
Subject: RE: New CEI Litigation re: Alleged Failure to Preserve Text Messages

Kevin,

Welcome back too! Thanks for this lovely piece of information.

Renee
Acting Assistant Administrator
and
Acting Chief Information Officer
U.S. Environmental Protection Agency
1200 Pennsylvania Ave (Mail Code: 2810A)
Washington DC 20460

OEI Main Office Number: (202) 564-6665
Scheduler: Georgia Bednar, (202) 564-6665
Senior Advisor: Renee Gutshall, (202) 566-0987
Fax Number: (202)501-1622
Direct Number: (202) 566-1884
Cell Number: (b) (6)

Pin: (b) (6)

From: Minoli, Kevin
Sent: Thursday, October 17, 2013 3:04 PM
To: Wynn, Renee; Noga, Vaughn
Cc: Miller, Kevin; Albright, Scott; Kelly, Lynn

Subject: FW: New CEI Litigation re: Alleged Failure to Preserve Text Messages

Renee and Vaughn- Welcome Back! I wanted to make sure you were aware of this new case. We will keep you and your folks in the loop as it moves along. 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: Kelly, Lynn
Sent: Thursday, October 17, 2013 2:32 PM
To: Kika, Stacy
Cc: Johnson, Alisha; Minoli, Kevin; Miller, Kevin; McDermott, Marna
Subject: New CEI Litigation

Hi Stacy:

Below is a desk statement (and some further background) on a new FOIA case filed against the Agency by the Competitive Enterprise Institute (CEI). I am the OGC staff lead on the case and can answer any additional questions you may have. Thanks!

(b)(5) AWP, (b)

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

(b)(5) AWP, (b)(5) ACP [redacted]

[redacted]

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: Wynn, Renee
To: Minoli, Kevin; Noga, Vaughn
Cc: Miller, Kevin; Albright, Scott; Kelly, Lynn
Subject: RE: New CEI Litigation re: Alleged Failure to Preserve Text Messages
Date: Thursday, October 17, 2013 3:22:54 PM

Kevin,

Welcome back too! Thanks for this lovely piece of information.

Renee
Acting Assistant Administrator
and
Acting Chief Information Officer
U.S. Environmental Protection Agency
1200 Pennsylvania Ave (Mail Code: 2810A)
Washington DC 20460

OEI Main Office Number: (202) 564-6665
Scheduler: Georgia Bednar, (202) 564-6665
Senior Advisor: Renee Gutshall, (202) 566-0987
Fax Number: (202)501-1622
Direct Number: (202) 566-1884
Cell Number: (202) 365-4934

Pin: 32D42665

From: Minoli, Kevin
Sent: Thursday, October 17, 2013 3:04 PM
To: Wynn, Renee; Noga, Vaughn
Cc: Miller, Kevin; Albright, Scott; Kelly, Lynn
Subject: FW: New CEI Litigation re: Alleged Failure to Preserve Text Messages

Renee and Vaughn- Welcome Back! I wanted to make sure you were aware of this new case. We will keep you and your folks in the loop as it moves along. 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: Kelly, Lynn

Sent: Thursday, October 17, 2013 2:32 PM
To: Kika, Stacy
Cc: Johnson, Alisha; Minoli, Kevin; Miller, Kevin; McDermott, Marna
Subject: New CEI Litigation

Hi Stacy:

Below is a desk statement (and some further background) on a new FOIA case filed against the Agency by the Competitive Enterprise Institute (CEI). I am the OGC staff lead on the case and can answer any additional questions you may have. Thanks!

(b)(5) AWP, (b)

[redacted]

[redacted]

(b)(5) AWP, (b)(5)

[redacted]

[redacted]

[redacted]

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:	Albright, Scott
To:	McDermott, Marna
Cc:	Miller, Kevin
Subject:	RE: OGC Program Update - Update ASAP
Date:	Thursday, September 12, 2013 3:54:00 PM
Attachments:	GLO litigation deadlines as of 9.12.13.docx

Marna –GLO's pending deadlines attached.

Scott Albright
U.S. EPA
Office of General Counsel
Information Law Practice Group
(202) 564-2884

From: McDermott, Marna
Sent: Thursday, September 12, 2013 2:47 PM
To: Miller, Kevin
Cc: Albright, Scott
Subject: RE: OGC Program Update - Update ASAP

Thanks – For the litigation deadlines, we need all Judicial Litigation deadlines. (Just filings is fine – we can leave off things like status conferences.)

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

From: Miller, Kevin
Sent: Thursday, September 12, 2013 2:38 PM
To: McDermott, Marna
Cc: Albright, Scott
Subject: RE: OGC Program Update - Update ASAP

Scott will update you. I thought we were looking for significant cases.

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

From: McDermott, Marna
Sent: Thursday, September 12, 2013 2:28 PM
To: Miller, Kevin
Cc: Albright, Scott
Subject: RE: OGC Program Update - Update ASAP

So ILPG has ZERO litigation deadlines between now and the end of the calendar year?

Marna McDermott
Associate Deputy General Counsel

U.S. Environmental Protection Agency
(202) 564-2890

From: Miller, Kevin
Sent: Thursday, September 12, 2013 2:25 PM
To: McDermott, Marna; Schmidt, Lorie
Cc: Albright, Scott; Embrey, Patricia; Graham, Cheryl
Subject: RE: OGC Program Update - Update ASAP

No updates from GLO.

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

From: McDermott, Marna
Sent: Thursday, September 12, 2013 2:23 PM
To: Miller, Kevin; Schmidt, Lorie
Cc: Albright, Scott; Embrey, Patricia; Graham, Cheryl
Subject: OGC Program Update - Update ASAP
Importance: High

I don't see anything from GLO or ARLO on these materials – I need to update them and send them downstairs BEFORE 4 pm TODAY.

Please let me know if you sent something I missed, or otherwise, Please provide updates in redline or via text in email.

If it is not possible for you to update these, please tell me and I will do the best I can using the reg review agendas.

Thanks.

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

From: McDermott, Marna
Sent: Monday, September 09, 2013 3:55 PM
To: Kuhlman, Richard; Lynch, Mary-Kay; Mclean, Kevin; Miller, Kevin; Neugeboren, Steven; Pressman, Steve; Schmidt, Lorie; Siciliano, CarolAnn
Cc: Michaud, John
Subject: OGC Program Update

It appears we are scheduled for OGC's program update on Friday at 10 am. It is scheduled to run 90 minutes and I believe it is on calendars for WLO, ARLO, and SWERLO already. Avi has decided he would like all Associates to join this first program update to the extent you are available, so I will be asking scheduling to add those of you not yet on the invitation. I am meeting with Avi Wednesday to update the agenda, so I do not yet have that to share, but there are several documents attached

that we should update so that I can provide them to the AO Wednesday. Please review the two "deadlines" documents as well as the "major decisions awaited" document and provide me changes and updates BY NOON WEDNESDAY. (That is a total of THREE documents for everyone's review.)

THE ARLO, SWERLO and WLO pieces reflect where the documents stood when we last got within 48 hours of this meeting. I assume you (Lorie, MK and Steve) will want changes to these as well. Please provide those changes by Wednesday noon as well or let me know if you no longer wish to use an outline. I do not think the other offices will need these outlines.

I believe the org chart to still be accurate but feel free to send any corrections my way.

Thanks!

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

From:	Miller, Kevin
To:	Minoli, Kevin
Subject:	FW: New FOIA lawsuit: Competitive Enterprise Institute v. United States Environmental Protection Agency 1:13cv779 D. DC
Date:	Wednesday, May 29, 2013 4:16:43 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

Kevin,

Attached is a copy of the new CEI complaint. This one is a failure to respond suit for the following request:

copies of all text messages sent by Assistant Administrator for Air and Radiation Gina McCarthy on a mobile telephone provided for her use by the Agency, on the following eighteen days:

2009: July 9, 2009; July 14, 2009
2010: July 22, 2010; March 4, 2010; March 24, 2010
2011: March 1, 2011; March 13, 2011; March 24, 2011; April 13, 2011; May 13, 2011; June 30, 2011; September 8, 2011; September 15, 2011; October 12, 2011; October 25, 2011
2012: February 28, 2012; June 19, 2012; June 29, 2012.

(b) (5) DPP, (b) (5) ACP, (b) (5) AWP

Kevin

From: Schramm, Daniel
To: OGC FRONT OFFICE
Subject: Friday Report for Feb 14
Date: Friday, February 14, 2014 5:43:02 PM
Attachments: Friday Report_2.14.14.docx

Happy Valentines Day!

FRIDAY REPORT – Friday 2/14/14

Key Items – Court decisions from the past week and filings & events for the coming week that may generate press and/or Congressional interest:

(b)(5) AWP, (b)(5) ACP

FYI Items (may want to inform the Administrator, Deputy Administrator, and others)

(b)(5) AWP, (b)(5) ACP

FRIDAY REPORT CALENDAR FORECAST – 2/7/14 to 2/21/14

Upcoming deadlines, meetings, and events identified by Regulatory Review Agendas

Not Responsive

Not Responsive

	2/27	GLO	Reply to MTD due – CEI v. EPA – Claims under FOIA and APA re: retention of text messages (June 2009-2013) *(Kelly)*

Not Responsive

Not Responsive

* Issues identified by law offices as likely to generate press or congressional interest.

Daniel Schramm
Special Assistant
U.S. EPA Office of General Counsel
(202) 564-3377
schramm.daniel@epa.gov

From: Anderson, Cindy
To: Minoli, Kevin; Miller, Kevin
Cc: Kelly, Lynn
Subject: RE: Bills for Gina McCarthy"s Blackberry - phone and text usage (FOIA Request # 2013-009249)
Date: Monday, September 16, 2013 1:16:29 PM
Importance: High

Kevin Miller and I are discussing this issue at 2pm today.

(b) (5) DPP, (b) (5) ACP, (b) (5) AWP [redacted]

[redacted].

Thanks -

Cindy
564-2690

From: Minoli, Kevin
Sent: Monday, September 16, 2013 1:13 PM
To: Miller, Kevin
Cc: Anderson, Cindy; Kelly, Lynn
Subject: RE: Bills for Gina McCarthy's Blackberry - phone and text usage (FOIA Request # 2013-009249)

Thanks. (b) (5) DPP, (b) (5) ACP, (b) (5) AWP [redacted] 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: Miller, Kevin
Sent: Monday, September 16, 2013 1:04 PM
To: Minoli, Kevin
Cc: Anderson, Cindy; Kelly, Lynn
Subject: FW: Bills for Gina McCarthy's Blackberry - phone and text usage (FOIA Request # 2013-009249)
Importance: High

Kevin,

(b) (5) DPP, (b) (5) ACP, (b) (5) AWP [redacted]

Kevin

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

From: Anderson, Cindy
Sent: Monday, September 16, 2013 9:35 AM
To: Miller, Kevin; Kelly, Lynn
Subject: FW: Bills for Gina McCarthy's Blackberry - phone and text usage (FOIA Request # 2013-009249)
Importance: High

(b) (5) DPP, (b) (5) ACP, (b) (5) AWP [redacted]

Cindy
564-2690

From: DAVIS, TANIKA
Sent: Friday, September 13, 2013 10:57 AM
To: Anderson, Cindy
Cc: Hilton, Patricia; McKenzie, Raymond; Reilly, Tom; Kelly, Lynn; Weinstock, Larry; Miller, Kevin; Clark, Dee
Subject: RE: Bills for Gina McCarthy's Blackberry - phone and text usage (FOIA Request # 2013-009249)

Cindy,

(b) (5) DPP, (b) (5) ACP, (b) (5) AWP [redacted]

Feel free to call me if you have any questions.

Thanks,

Tanika Davis
ECS Team - EPA ITS - ACT II Contractor
Sr. Telecommunications Billing Analyst
Information Management Group/Mobile Devices Business Office
Tel: (919) 541-1823
Fax: (919) 685-3118
Email: davis.tanika@epa.gov
~~~~~~

PLEASE NOTE If you require Mobile Device related assistance, please use the following contacts:
EZTech Locations - EPA Call Center 866-411-4372 (option 3) or EZTech@epa.gov
All Other Locations - EPA Call Center at 866-411-4EPA or EPACALLCENTER@epa.gov

Act mindfully. Accept entirely. Move strongly. Think softly. Speak beautifully. Live simply. Love completely.

From: Anderson, Cindy
Sent: Thursday, September 12, 2013 5:21 PM
To: DAVIS, TANIKA
Cc: Hilton, Patricia; McKenzie, Raymond; Reilly, Tom; Kelly, Lynn; Weinstock, Larry; Miller, Kevin
Subject: Bills for Gina McCarthy's Blackberry - phone and text usage (FOIA Request # 2013-009249)

Thank you all for a very helpful conference call this afternoon.

(b) (5) DPP, (b) (5) ACP, (b) (5) AWP [redacted]

[redacted]

[redacted]

[redacted]
~~~~~~

(b) (5) DPP, (b) (5) ACP, (b) (5) AWP

OGC folks – I'll schedule a meeting on Monday within Info Law Practice Group to discuss this issue.

Cindy Anderson
EPA/OGC
(202) 564-2690

From:	Kelly, Lynn
To:	Minoli, Kevin; Ketcham-Colwill, Nancy; Weinstock, Larry; Miller, Kevin
Subject:	RE: CEI Sues EPA for Gina McCarthy"s Text and Training Records
Date:	Monday, July 15, 2013 1:27:22 PM
Attachments:	CourtLink_Document_US-DIS-DCD_1_13cv1074_Idx_541927_7.15.2013_130806666.pdf

Just reading now.

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

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From: Minoli, Kevin
Sent: Monday, July 15, 2013 1:26 PM
To: Ketcham-Colwill, Nancy; Weinstock, Larry; Kelly, Lynn; Miller, Kevin
Subject: Fw: CEI Sues EPA for Gina McCarthy's Text and Training Records

Hey folks- do we have a copy of the complaint?

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

From: Johnson, Alisha
Sent: Monday, July 15, 2013 1:05:26 PM
To: Minoli, Kevin
Subject: Fw: CEI Sues EPA for Gina McCarthy's Text and Training Records

Fyi - (b) (5) DPP, (b) (5) ACP [redacted]?

From: Emily Yehle <eyehle@eenews.net>
Sent: Monday, July 15, 2013 1:02:31 PM
To: Johnson, Alisha
Subject: FW: CEI Sues EPA for Gina McCarthy's Text and Training Records

Alisha,

Any comment on this lawsuit? Deadline is 3.

Thanks!

Emily Yehle

Reporter
eyehle@eenews.net
202-446-0437 (p)
202-737-5299 (f)

Environment & Energy Publishing, LLC
122 C Street, NW, Suite 722, Washington, DC 20001
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EnergyWire, ClimateWire, E&E Daily, Greenwire, E&ENews PM, E&ETV

From: Brian McNicoll <bmac@cei.org>
Date: July 15, 2013, 12:01:38 PM EDT
To: <jplautz@eenews.net>
Subject: CEI Sues EPA for Gina McCarthy's Text and Training Records

Contact:
Brian McNicoll, 202-331-2765

CEI Sues EPA for Gina McCarthy's Text and Training Records

Nearing Senate Confirmation Vote, Nominee Remains Shielded by Agency Stonewalling

WASHINGTON, D.C., July 15, 2013 – The Competitive Enterprise Institute filed suit today in federal court to force the Environmental Protection Agency to turn over phone bills for the EPA-issued PDA issued to Gina McCarthy, a top EPA official and President Obama's nominee to serve as the next administrator.

CEI's suit also seeks records EPA has failed to turn over that would reflect whether McCarthy received and/or acknowledged the required training in EPA electronic record use and preservation 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." A similar, contemporaneous request produced "Scholar of Ethics" awards to the false identity assumed by the woman McCarthy seeks to replace, former administrator Lisa Jackson. EPA has failed to provide any evidence of McCarthy receiving the required training.

A Senate vote on McCarthy's nomination could come as soon as this week despite several unanswered questions involving her electronic correspondence and recordkeeping practices, including why EPA is withholding thousands of her emails about the "war on coal" in a lawsuit and unlawfully refusing to produce even factual information such as the dates, parties and subject matter.

"Obama's EPA is waving red flags all over the place," said **Christopher Horner**, Senior Fellow at CEI and author of "The Liberal War on Transparency," research for which turned up the 'Richard Windsor' fake name email scandal and other evidence of EPA avoiding disclosure requirements. "Ultimately, we will learn if EPA's problems with non-official email accounts, and accounts not identifying the account holder, extend to their use of private accounts for texting or even destroying this alternative to email, as it seems. Resolving the questions in today's suit, and about her use of a personal account, should be necessary conditions to moving forward on her nomination. This also would do much to address the growing impression Gina McCarthy has something to hide and that EPA is going to great lengths to help her hide it."

CEI submitted the IT-training request under the Freedom of Information Act in April, as well as one for text messages from McCarthy's EPA-issued phone on 18 specific dates. The latter request came after CEI was reliably informed McCarthy was warned to stop texting after concerns about the propriety of messages, specifically those sent on days she appeared before Congress.

EPA has claimed it has no such text messages. CEI then sought McCarthy's relevant phone bills, which should establish whether she used the text feature as an alternative to email on her EPA-assigned device, including on those dates. In a separate request, presently on administrative appeal, CEI also seeks work-related text messages from McCarthy's non-EPA-issued phone, which under EPA rules are public records subject to FOIA and which McCarthy is in fact responsible for turning over to EPA without being asked.

EPA has indicated satisfying CEI's request for phone bills would take two hours or less. But to further expedite matters CEI narrowed the request to seek only those portions that reflect text activity. If those records were created, on any device, EPA must explain what happened between those records being created and their "no records" response. The interim step between creation and claiming "no records," is that they have been destroyed – a violation of federal law.

EPA has apparently yet to include text messages in response to any request for records whether from Congress or through the FOIA process, although the law plainly says these messages are public records. CEI's investigation of EPA's transparency practices has revealed a pattern of resistance to disclosure of its activities. Already this has led to an Inspector General inquiry into EPA's instant messaging practices, presumably including whether EPA preserves IMs as required.

"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.]"

Horner noted a pattern of efforts on behalf of EPA to protect McCarthy until she

can be approved by the Senate. Already, in response to a court order for EPA to turn over about 12,000 emails related to "climate" and "coal," the dog not barking in those relatively few emails EPA did turn over was McCarthy, even though she is the lieutenant in charge of such matters. Thousands of those emails that were produced were heavily, sometimes comically redacted despite a directive from President Obama that FOIA requests should be treated with "a presumption of disclosure." These records did nonetheless reveal McCarthy was among the circle with whom Jackson used the false identity "Richard Windsor," rather than her own name, on email communications with top staffers and key outside allies. Jackson resigned after the court order to produce them, apparently to avoid answering questions about her decision to conduct certain official correspondence as such.

Other EPA executives, including Jim Martin, director of EPA's Region 8 in Denver, have resigned after having been found during litigation initiated by CEI to have regularly used a private email account to conduct official business. CEI similarly awaits emails from the Region 9 administrator's Comcast email account which he used for EPA-related correspondence. EPA's general counsel also resigned the day Horner released copies of screen shots establishing that the Windsor account was installed on Jackson's EPA computers.

"This particular case is one step on the path to determining the extent to which EPA is not meeting its obligations to keep the public informed," Horner said. "EPA should have moved matters along by now, particularly with Ms. McCarthy subject to scrutiny for a promotion."

► **Read the filed complaint here.**

CEI is a non-profit, non-partisan public policy group dedicated to the principles of free enterprise and limited government. For more information about CEI, please visit our website, cei.org, and blogs, Globalwarming.org and OpenMarket.org. Follow CEI on Twitter! Twitter.com/ceidotorg.

This message was sent to jplautz@eenews.net from:

Competitive Enterprise Institute | 1899 L Street NW 12th Floor | Washington, DC 20036

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From: Minoli, Kevin
To: Kelly, Lynn; Johnson, Alisha; Ketcham-Colwill, Nancy; Weinstock, Larry; Miller, Kevin
Cc: Goffman, Joseph
Subject: RE: CEI Sues EPA for Gina McCarthy"s Text and Training Records
Date: Monday, July 15, 2013 6:16:00 PM

Hey Folks- (b)(5) AWP, (b)(5) ACP, (b)(5) DPP [redacted]

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: Kelly, Lynn
Sent: Monday, July 15, 2013 4:27 PM
To: Minoli, Kevin; Johnson, Alisha; Ketcham-Colwill, Nancy; Weinstock, Larry; Miller, Kevin
Cc: Goffman, Joseph
Subject: RE: CEI Sues EPA for Gina McCarthy's Text and Training Records

(b)(5) AWP, (b)(5) ACP, (b)(5) DPP [redacted]

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

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From: Minoli, Kevin
Sent: Monday, July 15, 2013 3:28 PM
To: Johnson, Alisha; Ketcham-Colwill, Nancy; Kelly, Lynn; Weinstock, Larry; Miller, Kevin
Cc: Goffman, Joseph
Subject: RE: CEI Sues EPA for Gina McCarthy's Text and Training Records

(b)(5) AWP, (b)(5) ACP, (b)(5) DPP [redacted]. 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: Johnson, Alisha
Sent: Monday, July 15, 2013 3:26 PM
To: Ketcham-Colwill, Nancy; Kelly, Lynn; Weinstock, Larry; Minoli, Kevin; Miller, Kevin
Cc: Goffman, Joseph
Subject: RE: CEI Sues EPA for Gina McCarthy's Text and Training Records

(b) (5) DPP, (b) (5) ACP. Kevin?

From: Ketcham-Colwill, Nancy
Sent: Monday, July 15, 2013 3:26 PM
To: Kelly, Lynn; Weinstock, Larry; Minoli, Kevin; Miller, Kevin; Johnson, Alisha
Cc: Goffman, Joseph
Subject: RE: CEI Sues EPA for Gina McCarthy's Text and Training Records

(b) (5) DPP, (b) (5) ACP [redacted]

From: Ketcham-Colwill, Nancy
Sent: Monday, July 15, 2013 2:44 PM
To: Kelly, Lynn; Weinstock, Larry; Minoli, Kevin; Miller, Kevin; Johnson, Alisha
Cc: Goffman, Joseph
Subject: RE: CEI Sues EPA for Gina McCarthy's Text and Training Records

(b)(5) AWP, (b)(5) ACP, (b)(5) DPP [redacted]

(b)(5) AWP, (b)(5) ACP, (b)(5) DPP [redacted]

From: Kelly, Lynn
Sent: Monday, July 15, 2013 2:20 PM
To: Weinstock, Larry; Minoli, Kevin; Ketcham-Colwill, Nancy; Miller, Kevin
Subject: RE: CEI Sues EPA for Gina McCarthy's Text and Training Records

(b)(5) AWP, (b)(5) ACP, (b)(5) DPP [redacted]

(b)(5) AWP, (b)(5) ACP, (b)(5) DPP

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

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From: Weinstock, Larry
Sent: Monday, July 15, 2013 2:05 PM
To: Minoli, Kevin; Kelly, Lynn; Ketcham-Colwill, Nancy; Miller, Kevin
Subject: RE: CEI Sues EPA for Gina McCarthy's Text and Training Records

(b)(5) AWP

(b)(5) ACP

Larry

From: Minoli, Kevin
Sent: Monday, July 15, 2013 1:38 PM
To: Kelly, Lynn; Ketcham-Colwill, Nancy; Weinstock, Larry; Miller, Kevin
Subject: RE: CEI Sues EPA for Gina McCarthy's Text and Training Records

Thanks. (b)(5) AWP, (b)(5) ACP, (b)(5) DPP [redacted]

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: Monday, July 15, 2013 1:27 PM
To: Minoli, Kevin; Ketcham-Colwill, Nancy; Weinstock, Larry; Miller, Kevin
Subject: RE: CEI Sues EPA for Gina McCarthy's Text and Training Records

Just reading now.

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

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From: Minoli, Kevin
Sent: Monday, July 15, 2013 1:26 PM
To: Ketcham-Colwill, Nancy; Weinstock, Larry; Kelly, Lynn; Miller, Kevin
Subject: Fw: CEI Sues EPA for Gina McCarthy's Text and Training Records

Hey folks- do we have a copy of the complaint?

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

From: Johnson, Alisha
Sent: Monday, July 15, 2013 1:05:26 PM
To: Minoli, Kevin
Subject: Fw: CEI Sues EPA for Gina McCarthy's Text and Training Records

Fyi - (b) (5) DPP, (b) (5) ACP [redacted]?

From: Emily Yehle <eyehle@eenews.net>
Sent: Monday, July 15, 2013 1:02:31 PM
To: Johnson, Alisha
Subject: FW: CEI Sues EPA for Gina McCarthy's Text and Training Records

Alisha,

Any comment on this lawsuit? Deadline is 3.

Thanks!

Emily Yehle
Reporter
eyehle@eenews.net
202-446-0437 (p)
202-737-5299 (f)

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From: Brian McNicoll <bmac@cei.org>
Date: July 15, 2013, 12:01:38 PM EDT
To: <jplautz@eenews.net>
Subject: CEI Sues EPA for Gina McCarthy's Text and Training Records

Contact:
Brian McNicoll, 202-331-2765

CEI Sues EPA for Gina McCarthy's Text and Training Records

Nearing Senate Confirmation Vote, Nominee Remains Shielded by Agency Stonewalling

WASHINGTON, D.C., July 15, 2013 – The Competitive Enterprise Institute filed suit today in federal court to force the Environmental Protection Agency to turn over phone bills for the EPA-issued PDA issued to Gina McCarthy, a top EPA official and President Obama's nominee to serve as the next administrator.

CEI's suit also seeks records EPA has failed to turn over that would reflect whether McCarthy received and/or acknowledged the required training in EPA electronic record use and preservation 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." A similar, contemporaneous request produced "Scholar of Ethics" awards to the false identity assumed by the woman McCarthy seeks to replace,

former administrator Lisa Jackson. EPA has failed to provide any evidence of McCarthy receiving the required training.

A Senate vote on McCarthy's nomination could come as soon as this week despite several unanswered questions involving her electronic correspondence and recordkeeping practices, including why EPA is withholding thousands of her emails about the "war on coal" in a lawsuit and unlawfully refusing to produce even factual information such as the dates, parties and subject matter.

"Obama's EPA is waving red flags all over the place," said **Christopher Horner**, Senior Fellow at CEI and author of "The Liberal War on Transparency," research for which turned up the 'Richard Windsor' fake name email scandal and other evidence of EPA avoiding disclosure requirements. "Ultimately, we will learn if EPA's problems with non-official email accounts, and accounts not identifying the account holder, extend to their use of private accounts for texting or even destroying this alternative to email, as it seems. Resolving the questions in today's suit, and about her use of a personal account, should be necessary conditions to moving forward on her nomination. This also would do much to address the growing impression Gina McCarthy has something to hide and that EPA is going to great lengths to help her hide it."

CEI submitted the IT-training request under the Freedom of Information Act in April, as well as one for text messages from McCarthy's EPA-issued phone on 18 specific dates. The latter request came after CEI was reliably informed McCarthy was warned to stop texting after concerns about the propriety of messages, specifically those sent on days she appeared before Congress.

EPA has claimed it has no such text messages. CEI then sought McCarthy's relevant phone bills, which should establish whether she used the text feature as an alternative to email on her EPA-assigned device, including on those dates. In a separate request, presently on administrative appeal, CEI also seeks work-related text messages from McCarthy's non-EPA-issued phone, which under EPA rules are public records subject to FOIA and which McCarthy is in fact responsible for turning over to EPA without being asked.

EPA has indicated satisfying CEI's request for phone bills would take two hours or less. But to further expedite matters CEI narrowed the request to seek only those portions that reflect text activity. If those records were created, on any device, EPA must explain what happened between those records being created and their "no records" response. The interim step between creation and claiming "no records," is that they have been destroyed – a violation of federal law.

EPA has apparently yet to include text messages in response to any request for records whether from Congress or through the FOIA process, although the law plainly says these messages are public records. CEI's investigation of EPA's transparency practices has revealed a pattern of resistance to disclosure of its activities. Already this has led to an Inspector General inquiry into EPA's instant messaging practices, presumably including whether EPA preserves IMs as required.

"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.]”

Horner noted a pattern of efforts on behalf of EPA to protect McCarthy until she can be approved by the Senate. Already, in response to a court order for EPA to turn over about 12,000 emails related to “climate” and “coal,” the dog not barking in those relatively few emails EPA did turn over was McCarthy, even though she is the lieutenant in charge of such matters. Thousands of those emails that were produced were heavily, sometimes comically redacted despite a directive from President Obama that FOIA requests should be treated with “a presumption of disclosure.” These records did nonetheless reveal McCarthy was among the circle with whom Jackson used the false identity “Richard Windsor,” rather than her own name, on email communications with top staffers and key outside allies. Jackson resigned after the court order to produce them, apparently to avoid answering questions about her decision to conduct certain official correspondence as such.

Other EPA executives, including Jim Martin, director of EPA’s Region 8 in Denver, have resigned after having been found during litigation initiated by CEI to have regularly used a private email account to conduct official business. CEI similarly awaits emails from the Region 9 administrator’s Comcast email account which he used for EPA-related correspondence. EPA’s general counsel also resigned the day Horner released copies of screen shots establishing that the Windsor account was installed on Jackson’s EPA computers.

“This particular case is one step on the path to determining the extent to which EPA is not meeting its obligations to keep the public informed,” Horner said. “EPA should have moved matters along by now, particularly with Ms. McCarthy subject to scrutiny for a promotion.”

► **Read the filed complaint here.**

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Competitive Enterprise Institute | 1899 L Street NW 12th Floor | Washington, DC 20036

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From: Miller, Kevin
To: Anderson, Cindy; Minoli, Kevin
Cc: Kelly, Lynn
Subject: RE: CEI v. EPA (13-1074) billing for Gina McCarthy text messages
Date: Monday, September 16, 2013 4:19:31 PM

(b) (5) DPP, (b) (5) ACP, (b) (5) AWP

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

From: Anderson, Cindy
Sent: Monday, September 16, 2013 3:58 PM
To: Minoli, Kevin; Miller, Kevin
Cc: Kelly, Lynn
Subject: CEI v. EPA (13-1074) billing for Gina McCarthy text messages
Importance: High

Judge Collyer just issued a Minute Order this afternoon confirming that a Joint Proposed Briefing Schedule is due this Thursday, Sept. 19.

(b)(5) AWP, (b)(5) ACP, (b)(5) DPP

(b)(5) AWP, (b)(5) ACP, (b)(5) DPP

(b) (5) DPP, (b) (5) ACP, (b) (5) AWP [redacted]

[redacted]

[redacted]

[redacted]

(b) (5) DPP, (b) (5) ACP [redacted]

(b)(5) AWP, (b)(5) ACP, (b)(5) DPP [redacted]

[redacted]

Thanks!

Cindy Anderson
EPA/OGC
(202) 564-2690

From: Minoli, Kevin
To: Kelly, Lynn
Cc: Miller, Kevin; McDermott, Marna
Subject: RE: CEI v. EPA, 13-0779 (BAH)
Date: Tuesday, July 30, 2013 11:35:00 AM

(b)(5) AWP, (b)(5) ACP, (b)(5) DPP
[redacted]. 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: Kelly, Lynn
Sent: Tuesday, July 30, 2013 10:22 AM
To: Minoli, Kevin
Cc: Miller, Kevin; McDermott, Marna
Subject: FW: CEI v. EPA, 13-0779 (BAH)
Importance: High

Kevin,

(b)(5) AWP, (b)(5) ACP, (b)(5) DPP
[redacted]

[redacted]

Thanks!

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

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From: Ketcham-Colwill, Nancy
Sent: Tuesday, July 30, 2013 10:09 AM
To: Kelly, Lynn; Miller, Kevin
Subject: RE: CEI v. EPA, 13-0779 (BAH)

(b)(5) AWP, (b)(5) ACP, (b)(5) DPP
[redacted]

(b) (5) DPP, (b) (5) ACP [redacted] Thanks for your help in thinking this through!

Nancy

From: Kelly, Lynn
Sent: Tuesday, July 30, 2013 8:54 AM
To: Miller, Kevin; Ketcham-Colwill, Nancy
Subject: RE: CEI v. EPA, 13-0779 (BAH)

(b) (5) DPP, (b) (5) ACP, (b) (5) AWP [redacted]

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

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From: Miller, Kevin
Sent: Tuesday, July 30, 2013 8:39 AM

To: Kelly, Lynn; Ketcham-Colwill, Nancy
Subject: RE: CEI v. EPA, 13-0779 (BAH)

Lynn & Nancy,

(b) (5) DPP, (b) (5) ACP, (b) (5) AWP [redacted].

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

From: Kelly, Lynn
Sent: Monday, July 29, 2013 5:55 PM
To: Ketcham-Colwill, Nancy; Miller, Kevin
Subject: FW: CEI v. EPA, 13-0779 (BAH)

Nancy,

(b) (5) DPP, (b) (5) ACP, (b) (5) AWP [redacted]

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

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From: Lo, Michelle (USADC) [mailto:Michelle.Lo2@usdoj.gov]

Sent: Monday, July 29, 2013 3:12 PM
To: Kelly, Lynn
Subject: FW: CEI v. EPA, 13-0779 (BAH)

Lynn: (b)(5) AWP, (b)(5) ACP [redacted] Thanks.

From: Hans Bader [mailto:HBader@cei.org]
Sent: Monday, July 29, 2013 3:02 PM
To: Lo, Michelle (USADC)
Cc: Sam Kazman; Chris Horner
Subject: RE: CEI v. EPA, 13-0779 (BAH)

One final thing: My colleagues are curious and want an answer to the following question before we dismiss the case: How can there be no responsive records (as stated by EPA in its no-records response, and echoed in the answer), that is, no text messages, when EPA has elsewhere produced documents to us saying that Ms. McCarthy sent hundreds of text messages using her EPA device (see the attached administrative response by EPA to Chris Horner's FOIA request – the first attached file is EPA's cover letter in response to that request, and the second is its substantive response)? I'd like to get that clarification on that issue before filing the stipulation I sent earlier.

Thanks,

Hans Bader
CEI

From: Hans Bader
Sent: Monday, July 29, 2013 12:17 PM
To: 'Lo, Michelle (USADC)'
Cc: Sam Kazman
Subject: RE: CEI v. EPA, 13-0779 (BAH)

Oops. The draft stipulation I sent in the below email had the wrong docket number on it. That has been fixed in the attached draft stipulation.

From: Hans Bader
Sent: Monday, July 29, 2013 12:11 PM
To: 'Lo, Michelle (USADC)'
Cc: Sam Kazman
Subject: RE: CEI v. EPA, 13-0779 (BAH)

Chris Horner remains very skeptical of the no-records response. Nevertheless, it seems to me that it may not be worth the candle to keep litigating this particular case, as a prudential matter.

Accordingly, plaintiff would be willing to file the attached stipulation of dismissal. If this is acceptable to you, then it can be filed with the court, and it will not be necessary to set a briefing schedule.

Sorry for the delay in responding.

Thank you.

Hans Bader
Competitive Enterprise Institute
(202) 331-2278
hbader@cei.org

From: Lo, Michelle (USADC) [mailto:Michelle.Lo2@usdoj.gov]
Sent: Monday, July 29, 2013 10:11 AM
To: Hans Bader
Subject: RE: CEI v. EPA, 13-0779 (BAH)

Dear Hans:

Per Judge Howell's Standing Order, the parties are to jointly prepare and submit a report indicating whether the agency has made a final determination on compliance with the FOIA request at issue and propose a schedule for the filing of dispositive motions within 14 days after any defendant appears, or by this Friday, August 2. As you know, the EPA issued a "no records" response to CEI's FOIA request on May 31, 2013. Provided CEI intends to proceed with this litigation, we propose the following briefing schedule:

EPA's Motion for Summary Judgment	September 16, 2013
CEI's Opposition to EPA's Motion for Summary Judgment	October 16, 2013
EPA's Reply	November 6, 2013

Please let me know if the above proposal is agreeable to you. Thank you.

Michelle Lo
Assistant United States Attorney
Civil Division
555 4th Street, N.W.
Washington, D.C. 20530
(202) 252-2541 – ***Please note new number***
(202) 514-8780 fax
Michelle.Lo2@usdoj.gov

From: Hans Bader [mailto:HBader@cei.org]
Sent: Wednesday, July 17, 2013 6:06 PM
To: Lo, Michelle (USADC)
Subject: RE: CEI v. EPA, 13-0779 (BAH)

I am still waiting to hear back. Sorry about the delay.

From: Lo, Michelle (USADC) [mailto:Michelle.Lo2@usdoj.gov]
Sent: Wednesday, July 17, 2013 6:00 PM
To: Hans Bader
Subject: RE: CEI v. EPA, 13-0779 (BAH)

Hans:

Have you had a chance to discuss with your colleagues whether CEI intends to move forward with this litigation in light of the EPA's no records response?

Thanks,
Michelle

From: Lo, Michelle (USADC)
Sent: Thursday, July 11, 2013 4:12 PM
To: Hans Bader <HBader@cei.org> (HBader@cei.org)
Subject: CEI v. EPA, 13-0779 (BAH)

Hans:

Attached is the EPA's response to CEI's FOIA request for "copies of all text messages sent by Assistant Administrator for Air and Radiation Gina McCarthy on a mobile telephone provided for her use by the Agency" that I was referring to on our call just now. Please let me know if CEI believes that further litigation of this case will be necessary in light of the EPA's no records response. Thank you.

<< File: Final Response 6005.pdf >>

Michelle Lo
Assistant United States Attorney
Civil Division
555 4th Street, N.W.
Washington, D.C. 20530
(202) 514-5134; (202) 514-8780 fax
Michelle.Lo2@usdoj.gov

From: Minoli, Kevin
To: Kelly, Lynn
Cc: McDermott, Marna
Subject: RE: CEI v. EPA, 13-0779 (BAH)
Date: Tuesday, July 30, 2013 5:26:00 PM

Great, thanks. Let me know how it turns out.

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: Tuesday, July 30, 2013 4:55 PM
To: Minoli, Kevin
Cc: McDermott, Marna
Subject: FW: CEI v. EPA, 13-0779 (BAH)

(b)(5) AWP, (b)(5) ACP [redacted]

[redacted]

[redacted]

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

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From: Drinkard, Andrea
Sent: Tuesday, July 30, 2013 4:53 PM
To: Ketcham-Colwill, Nancy; Kelly, Lynn; Miller, Kevin
Subject: Re: CEI v. EPA, 13-0779 (BAH)

I flagged this update for the press office as well.

From: Ketcham-Colwill, Nancy
Sent: Tuesday, July 30, 2013 4:49:54 PM
To: Kelly, Lynn; Miller, Kevin
Cc: Drinkard, Andrea

Subject: RE: CEI v. EPA, 13-0779 (BAH)

I like this response, too, so if you, Kevin and Michelle think it best, let's go with it. Thanks for all the efforts to get to good litigation outcomes.

From: Kelly, Lynn
Sent: Tuesday, July 30, 2013 4:32 PM
To: Ketcham-Colwill, Nancy; Miller, Kevin
Cc: Drinkard, Andrea
Subject: RE: CEI v. EPA, 13-0779 (BAH)

Nancy,

Apologies in advance for the lengthy email. (b)(5) AWP, (b)(5) ACP, (b)(5) DPP [redacted]

[redacted]

[redacted]

(b) (5) DPP, (b) (5) ACP, (b) (5) AWP [redacted]

[redacted]

[redacted]

(b) (5) DPP, (b) (5) ACP [redacted]

(b)(5) AWP, (b)(5) ACP, (b)(5) DPP [redacted] As always, I am available to discuss.

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

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From: Drinkard, Andrea
Sent: Tuesday, July 30, 2013 2:15 PM
To: Ketcham-Colwill, Nancy; Kelly, Lynn; Miller, Kevin
Subject: RE: CEI v. EPA, 13-0779 (BAH)

I have flagged for the press office.

Andrea Drinkard
U.S. Environmental Protection Agency
Office of Air and Radiation
Email: drinkard.andrea@epa.gov
Phone: 202.564.1601
Cell: 202.236.7765

From: Ketcham-Colwill, Nancy
Sent: Tuesday, July 30, 2013 1:16 PM
To: Kelly, Lynn; Miller, Kevin
Cc: Drinkard, Andrea
Subject: RE: CEI v. EPA, 13-0779 (BAH)

(b)(5) AWP, (b)(5) ACP, (b)(5) DPP [redacted]

From: Kelly, Lynn
Sent: Tuesday, July 30, 2013 12:33 PM
To: Ketcham-Colwill, Nancy; Miller, Kevin
Subject: RE: CEI v. EPA, 13-0779 (BAH)

Nancy,

(b)(5) AWP, (b)(5) ACP, (b)(5) DPP [redacted]

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

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From: Ketcham-Colwill, Nancy
Sent: Tuesday, July 30, 2013 10:09 AM
To: Kelly, Lynn; Miller, Kevin
Subject: RE: CEI v. EPA, 13-0779 (BAH)

(b)(5) AWP, (b)(5) ACP, (b)(5) DPP

Nancy

From: Kelly, Lynn
Sent: Tuesday, July 30, 2013 8:54 AM
To: Miller, Kevin; Ketcham-Colwill, Nancy
Subject: RE: CEI v. EPA, 13-0779 (BAH)

(b)(5) AWP, (b)(5) ACP, (b)(5) DPP

(b)(5)
AWP,

ACP,
(b)(5)
DPP

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

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From: Miller, Kevin
Sent: Tuesday, July 30, 2013 8:39 AM
To: Kelly, Lynn; Ketcham-Colwill, Nancy
Subject: RE: CEI v. EPA, 13-0779 (BAH)

Lynn & Nancy,

(b)(5) AWP, (b)(5) ACP, (b)(5) DPP

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

From: Kelly, Lynn
Sent: Monday, July 29, 2013 5:55 PM
To: Ketcham-Colwill, Nancy; Miller, Kevin
Subject: FW: CEI v. EPA, 13-0779 (BAH)

Nancy,

(b)(5) AWP, (b)(5) ACP, (b)(5) DPP

(b)(5)

(5) ACP,
(b)(5)
DPP

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

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From: Lo, Michelle (USADC) [mailto:Michelle.Lo2@usdoj.gov]
Sent: Monday, July 29, 2013 3:12 PM
To: Kelly, Lynn
Subject: FW: CEI v. EPA, 13-0779 (BAH)

Lynn: (b)(5) AWP, (b)(5) ACP
Thanks.

From: Hans Bader [mailto:HBader@cei.org]
Sent: Monday, July 29, 2013 3:02 PM
To: Lo, Michelle (USADC)
Cc: Sam Kazman; Chris Horner
Subject: RE: CEI v. EPA, 13-0779 (BAH)

One final thing: My colleagues are curious and want an answer to the following question before we dismiss the case: How can there be no responsive records (as stated by EPA in its no-records response, and echoed in the answer), that is, no text messages, when EPA has elsewhere produced documents to us saying that Ms. McCarthy sent hundreds of text messages using her EPA device (see the attached administrative response by EPA to Chris Horner's FOIA request – the first attached file is EPA's cover letter in response to that request, and the second is its substantive response)? I'd like to get that clarification on that issue before filing the stipulation I sent earlier.

Thanks,

Hans Bader

CEI

From: Hans Bader
Sent: Monday, July 29, 2013 12:17 PM
To: 'Lo, Michelle (USADC)'
Cc: Sam Kazman
Subject: RE: CEI v. EPA, 13-0779 (BAH)

Oops. The draft stipulation I sent in the below email had the wrong docket number on it. That has been fixed in the attached draft stipulation.

From: Hans Bader
Sent: Monday, July 29, 2013 12:11 PM
To: 'Lo, Michelle (USADC)'
Cc: Sam Kazman
Subject: RE: CEI v. EPA, 13-0779 (BAH)

Chris Horner remains very skeptical of the no-records response. Nevertheless, it seems to me that it may not be worth the candle to keep litigating this particular case, as a prudential matter.

Accordingly, plaintiff would be willing to file the attached stipulation of dismissal. If this is acceptable to you, then it can be filed with the court, and it will not be necessary to set a briefing schedule.

Sorry for the delay in responding.

Thank you.

Hans Bader
Competitive Enterprise Institute
(202) 331-2278
hbader@cei.org

From: Lo, Michelle (USADC) [mailto:Michelle.Lo2@usdoj.gov]
Sent: Monday, July 29, 2013 10:11 AM
To: Hans Bader
Subject: RE: CEI v. EPA, 13-0779 (BAH)

Dear Hans:

Per Judge Howell's Standing Order, the parties are to jointly prepare and submit a report indicating whether the agency has made a final determination on compliance with the FOIA request at issue and propose a schedule for the filing of dispositive motions within 14 days after any defendant appears, or by this Friday, August 2. As you know, the EPA issued a "no records" response to CEI's FOIA request on May 31, 2013. Provided CEI intends to proceed with this litigation, we propose the following briefing schedule:

EPA's Motion for Summary Judgment September 16, 2013

CEI's Opposition to EPA's Motion for Summary Judgment October 16, 2013
EPA's Reply November 6, 2013

Please let me know if the above proposal is agreeable to you. Thank you.

Michelle Lo
Assistant United States Attorney
Civil Division
555 4th Street, N.W.
Washington, D.C. 20530
(202) 252-2541 – ***Please note new number***
(202) 514-8780 fax
Michelle.Lo2@usdoj.gov

From: Hans Bader [mailto:HBader@cei.org]
Sent: Wednesday, July 17, 2013 6:06 PM
To: Lo, Michelle (USADC)
Subject: RE: CEI v. EPA, 13-0779 (BAH)

I am still waiting to hear back. Sorry about the delay.

From: Lo, Michelle (USADC) [mailto:Michelle.Lo2@usdoj.gov]
Sent: Wednesday, July 17, 2013 6:00 PM
To: Hans Bader
Subject: RE: CEI v. EPA, 13-0779 (BAH)

Hans:

Have you had a chance to discuss with your colleagues whether CEI intends to move forward with this litigation in light of the EPA's no records response?

Thanks,
Michelle

From: Lo, Michelle (USADC)
Sent: Thursday, July 11, 2013 4:12 PM
To: Hans Bader <HBader@cei.org> (HBader@cei.org)
Subject: CEI v. EPA, 13-0779 (BAH)

Hans:

Attached is the EPA's response to CEI's FOIA request for "copies of all text messages sent by Assistant Administrator for Air and Radiation Gina McCarthy on a mobile telephone provided for her use by the Agency" that I was referring to on our call just now. Please let me know if CEI believes that further litigation of this case will be necessary in light of the EPA's no records response. Thank you.

<< File: Final Response 6005.pdf >>

Michelle Lo
Assistant United States Attorney
Civil Division
555 4th Street, N.W.
Washington, D.C. 20530
(202) 514-5134; (202) 514-8780 fax
Michelle.Lo2@usdoj.gov

From: Minoli, Kevin
To: McDermott, Marna
Subject: RE: Detailed Billing for Gina McCarthy
Date: Thursday, June 27, 2013 4:06:00 PM

Avi wants in on the mtg too.

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

-----Original Message-----
From: McDermott, Marna
Sent: Thursday, June 27, 2013 4:03 PM
To: Minoli, Kevin; Weinstock, Larry; Miller, Kevin; Ketcham-Colwill, Nancy
Subject: RE: Detailed Billing for Gina McCarthy

Sure. Larry - Can you give me a call re: who to include. Thanks.

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

-----Original Message-----
From: Minoli, Kevin
Sent: Thursday, June 27, 2013 4:02 PM
To: Weinstock, Larry; Miller, Kevin; Ketcham-Colwill, Nancy
Cc: McDermott, Marna
Subject: RE: Detailed Billing for Gina McCarthy

I'm running out the door, but think it would be good for us to have a call on Monday to discuss where we are and the production schedule. Marna, any chance you could have Gail set this up, please? 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

-----Original Message-----
From: Weinstock, Larry
Sent: Thursday, June 27, 2013 3:26 PM
To: Minoli, Kevin; Miller, Kevin; Ketcham-Colwill, Nancy
Cc: McDermott, Marna
Subject: FW: Detailed Billing for Gina McCarthy

(b) (5) DPP

(b) (5) DPP [redacted]

Larry

-----Original Message-----
From: Reilly, Tom
Sent: Thursday, June 27, 2013 3:13 PM
To: Weinstock, Larry
Subject: FW: Detailed Billing for Gina McCarthy

Larry,

My apologies - I have been tied up with FY14 budget schedules that we had to file this week - (b) (5) DPP [redacted]

Tom

-----Original Message-----
From: DAVIS, TANIKA
Sent: Tuesday, June 25, 2013 1:26 PM
To: Reilly, Tom; Clark, Dee; Grantham, Jessica
Cc: Aydlett, Dwayne; Lanier, Lynsey; Beaver, William
Subject: RE: Detailed Billing for Gina McCarthy

Tom,

(b) (5) DPP [redacted] Please let me know if you have any questions.

Thanks,

Tanika Davis
ECS Team - EPA ITS - ACT II Contractor
Sr. Telecommunications Billing Analyst
Information Management Group/Mobile Devices Business Office
Tel: (919) 541-1823
Fax: (919) 685-3118
Email: davis.tanika@epa.gov
~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~
PLEASE NOTE If you require Mobile Device related assistance, please use the following contacts:
EZTech Locations - EPA Call Center 866-411-4372 (option 3) or EZTech@epa.gov All Other Locations - EPA Call Center at 866-411-4EPA or EPACALLCENTER@epa.gov

Act mindfully. Accept entirely. Move strongly. Think softly. Speak beautifully. Live simply. Love completely.

-----Original Message-----
From: Reilly, Tom
Sent: Tuesday, June 11, 2013 3:34 PM
To: DAVIS, TANIKA; Clark, Dee; Grantham, Jessica
Cc: Aydlett, Dwayne; Lanier, Lynsey; Beaver, William
Subject: RE: Detailed Billing for Gina McCarthy

Tanika,

Thanks for the information - (b) (5) DPP [redacted]?
~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~

Tom

-----Original Message-----
From: DAVIS, TANIKA
Sent: Tuesday, June 11, 2013 3:26 PM
To: Reilly, Tom; Clark, Dee; Grantham, Jessica
Cc: Aydlett, Dwayne; Lanier, Lynsey; Beaver, William
Subject: RE: Detailed Billing for Gina McCarthy

Hello Everyone,

(b) (5) DPP [redacted]

Please let me know if you have any questions.

Thanks,

Tanika Davis
ECS Team - EPA ITS - ACT II Contractor
Sr. Telecommunications Billing Analyst
Information Management Group/Mobile Devices Business Office
Tel: (919) 541-1823
Fax: (919) 685-3118
Email: davis.tanika@epa.gov
~~~~~~
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Act mindfully. Accept entirely. Move strongly. Think softly. Speak beautifully. Live simply. Love completely.

-----Original Message-----
From: Reilly, Tom
Sent: Tuesday, June 11, 2013 12:01 PM
To: DAVIS, TANIKA; Clark, Dee; Grantham, Jessica
Cc: Aydlett, Dwayne; Lanier, Lynsey; Beaver, William
Subject: RE: Detailed Billing for Gina McCarthy

Thank you Tanika

-----Original Message-----
From: DAVIS, TANIKA
Sent: Tuesday, June 11, 2013 11:59 AM
To: Reilly, Tom; Clark, Dee; Grantham, Jessica
Cc: Aydlett, Dwayne; Lanier, Lynsey; Beaver, William
Subject: RE: Detailed Billing for Gina McCarthy

Tom,

I was in a meeting. I am working on that now. I will send as soon as possible.

Thanks,

Tanika Davis
~~~~~~

ECS Team - EPA ITS - ACT II Contractor
Sr. Telecommunications Billing Analyst
Information Management Group/Mobile Devices Business Office
Tel: (919) 541-1823
Fax: (919) 685-3118
Email: davis.tanika@epa.gov
~~~~~~
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EZTech Locations - EPA Call Center 866-411-4372 (option 3) or EZTech@epa.gov All Other Locations - EPA Call Center at 866-411-4EPA or EPACALLCENTER@epa.gov

Act mindfully. Accept entirely. Move strongly. Think softly. Speak beautifully. Live simply. Love completely.

-----Original Message-----
From: Reilly, Tom
Sent: Tuesday, June 11, 2013 11:28 AM
To: DAVIS, TANIKA; Clark, Dee; Grantham, Jessica
Cc: Aydlett, Dwayne; Lanier, Lynsey; Beaver, William
Subject: RE: Detailed Billing for Gina McCarthy

Tanika,

(b) (5) DPP [redacted]

Tom

-----Original Message-----
From: DAVIS, TANIKA
Sent: Monday, June 10, 2013 5:39 PM
To: Reilly, Tom; Clark, Dee; Grantham, Jessica
Cc: Aydlett, Dwayne; Lanier, Lynsey; Beaver, William
Subject: RE: Detailed Billing for Gina McCarthy

Hello Everyone,

(b) (5) DPP [redacted]

[redacted]

Thanks,

Tanika Davis
ECS Team - EPA ITS - ACT II Contractor
Sr. Telecommunications Billing Analyst
Information Management Group/Mobile Devices Business Office
Tel: (919) 541-1823
Fax: (919) 685-3118
Email: davis.tanika@epa.gov
~~~~~~
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Act mindfully. Accept entirely. Move strongly. Think softly. Speak beautifully. Live simply. Love completely.

-----Original Message-----
From: Reilly, Tom
Sent: Monday, June 10, 2013 2:02 PM
To: DAVIS, TANIKA; Clark, Dee; Grantham, Jessica
Cc: Aydlett, Dwayne; Lanier, Lynsey; Beaver, William
Subject: RE: Detailed Billing for Gina McCarthy

Tanika,

Give me what you can by the end of today

Tom

-----Original Message-----
From: DAVIS, TANIKA
Sent: Monday, June 10, 2013 2:00 PM
To: Clark, Dee; Grantham, Jessica
Cc: Reilly, Tom; Aydlett, Dwayne; Lanier, Lynsey; Beaver, William
Subject: RE: Detailed Billing for Gina McCarthy

Dee,

(b) (5) DPP [redacted]

Please advise.

Thanks,

Tanika Davis
ECS Team - EPA ITS - ACT II Contractor
Sr. Telecommunications Billing Analyst
Information Management Group/Mobile Devices Business Office
Tel: (919) 541-1823
Fax: (919) 685-3118
Email: davis.tanika@epa.gov
~~~~~~
PLEASE NOTE If you require Mobile Device related assistance, please use the following contacts:
EZTech Locations - EPA Call Center 866-411-4372 (option 3) or EZTech@epa.gov All Other Locations - EPA Call Center at 866-411-4EPA or EPACALLCENTER@epa.gov

Act mindfully. Accept entirely. Move strongly. Think softly. Speak beautifully. Live simply. Love completely.

-----Original Message-----
From: Clark, Dee
Sent: Monday, June 10, 2013 12:45 PM
To: DAVIS, TANIKA; Grantham, Jessica
Cc: Reilly, Tom; Aydlett, Dwayne; Lanier, Lynsey; Beaver, William
Subject: RE: Detailed Billing for Gina McCarthy
~~~~~~

Importance: High

Tanika,

(b) (5) DPP [redacted]

Thanks,

Dee Clark
WCF Service Manager for MD, YA, LD, LE, & LF ATPOC for TDD 04 & 09 (ITS-ACT II) ITIL v3 Foundation Level Certified U. S. EPA | OEI | OTOP | EDSD | EPA West - 6312L clark.dee@epa.gov | 202-566-0890 office | 202-297-5756 cell

-----Original Message-----
From: DAVIS, TANIKA
Sent: Monday, June 10, 2013 12:25 PM
To: Clark, Dee; Grantham, Jessica
Cc: Reilly, Tom; Aydlett, Dwayne; Lanier, Lynsey; Beaver, William
Subject: RE: Detailed Billing for Gina McCarthy

Dee,

(b) (5) DPP [redacted]

Thanks,

Tanika Davis
ECS Team - EPA ITS - ACT II Contractor
Sr. Telecommunications Billing Analyst
Information Management Group/Mobile Devices Business Office
Tel: (919) 541-1823
Fax: (919) 685-3118
Email: davis.tanika@epa.gov
~~~~~~
PLEASE NOTE If you require Mobile Device related assistance, please use the following contacts: EZTech Locations - EPA Call Center 866-411-4372 (option 3) or EZTech@epa.gov All Other Locations - EPA Call Center at 866-411-4EPA or EPACALLCENTER@epa.gov

Act mindfully. Accept entirely. Move strongly. Think softly. Speak beautifully. Live simply. Love completely.

-----Original Message-----
From: Clark, Dee
Sent: Monday, June 10, 2013 11:29 AM
To: Grantham, Jessica; DAVIS, TANIKA
Cc: Reilly, Tom; Aydlett, Dwayne; Lanier, Lynsey; Beaver, William
Subject: FW: Detailed Billing for Gina McCarthy

Jessica/Tanika,

Please provide the requested data today.
~~~~~~

Thanks for your hard work on this!!!

Dee Clark
WCF Service Manager for MD, YA, LD, LE, & LF ATPOC for TDD 04 & 09 (ITS-ACT II) ITIL v3 Foundation Level Certified U. S. EPA | OEI | OTOP | EDSD | EPA West - 6312L clark.dee@epa.gov | 202-566-0890 office | 202-297-5756 cell

-----Original Message-----
From: Reilly, Tom
Sent: Thursday, June 06, 2013 11:10 AM
To: Clark, Dee
Subject: FW: Detailed Billing for Gina McCarthy

Dee,

(b) (5) DPP [redacted].

Tom

-----Original Message-----
From: Slade, Reginald
Sent: Thursday, June 06, 2013 9:41 AM
To: Reilly, Tom
Subject: RE: Detailed Billing for Gina McCarthy

Tom,

(b) (5) DPP [redacted]

Many thanks,

Reginald A. Slade
Team Leader/Information Management Officer (IMO) Office of Air and Radiation
202 564-1346

-----Original Message-----
From: Slade, Reginald
Sent: Wednesday, June 05, 2013 9:35 AM
To: Reilly, Tom
Subject: RE: Detailed Billing for Gina McCarthy

Thanks Tom!

Reginald A. Slade
Team Leader/Information Management Officer (IMO) Office of Air and Radiation
202 564-1346

-----Original Message-----

From: Reilly, Tom
Sent: Wednesday, June 05, 2013 9:25 AM
To: Slade, Reginald; Noga, Vaughn; Clark, Dee; Grantham, Jessica; DAVIS, TANIKA
Cc: Simmons, Joseph; Lee, Maja; Aydlett, Dwayne; Beaver, William; Lanier, Lynsey; Salgado, Omayra
Subject: RE: Detailed Billing for Gina McCarthy

Reggie,

I have the Lockheed guys pulling that for you right now

Tom

-----Original Message-----
From: Slade, Reginald
Sent: Wednesday, June 05, 2013 9:24 AM
To: Noga, Vaughn; Clark, Dee; Grantham, Jessica; DAVIS, TANIKA
Cc: Simmons, Joseph; Lee, Maja; Reilly, Tom; Aydlett, Dwayne; Beaver, William; Lanier, Lynsey; Salgado, Omayra
Subject: RE: Detailed Billing for Gina McCarthy

Vaughn,

(b) (5) DPP [redacted]

Thanks.

Reginald A. Slade
Team Leader/Information Managment Officer (IMO) Office of Air and Radiation
202 564-1346

-----Original Message-----
From: Noga, Vaughn
Sent: Wednesday, June 05, 2013 9:22 AM
To: Slade, Reginald; Clark, Dee; Grantham, Jessica; DAVIS, TANIKA
Cc: Simmons, Joseph; Lee, Maja; Reilly, Tom; Aydlett, Dwayne; Beaver, William; Lanier, Lynsey; Salgado, Omayra
Subject: RE: Detailed Billing for Gina McCarthy

Reggie,

(b) (5) DPP [redacted] ?

Vaughn

-----Original Message-----
From: Slade, Reginald
Sent: Wednesday, June 05, 2013 9:19 AM
To: Noga, Vaughn; Clark, Dee; Grantham, Jessica; DAVIS, TANIKA
Cc: Simmons, Joseph; Lee, Maja; Reilly, Tom; Aydlett, Dwayne; Beaver, William; Lanier, Lynsey; Salgado, Omayra
Subject: RE: Detailed Billing for Gina McCarthy

Vaughn,

(b) (5) DPP [redacted]

Many thanks,

Reginald A. Slade
Team Leader/Information Managment Officer (IMO) Office of Air and Radiation
202 564-1346

-----Original Message-----
From: Noga, Vaughn
Sent: Tuesday, June 04, 2013 3:50 PM
To: Slade, Reginald; Clark, Dee; Grantham, Jessica; DAVIS, TANIKA
Cc: Simmons, Joseph; Lee, Maja; Reilly, Tom; Aydlett, Dwayne; Beaver, William; Lanier, Lynsey
Subject: Re: Detailed Billing for Gina McCarthy

Thank you.

Team - please provide an ETA for the info.

From: Slade, Reginald
Sent: Tuesday, June 04, 2013 12:59:28 PM
To: Noga, Vaughn; Clark, Dee; Grantham, Jessica; DAVIS, TANIKA
Cc: Simmons, Joseph; Lee, Maja; Reilly, Tom; Aydlett, Dwayne; Beaver, William; Lanier, Lynsey
Subject: RE: Detailed Billing for Gina McCarthy

Officially less than 20 working days. Since the request is for Gina, her Chief of Staff is anticipating that to mean this week, if possible.

Thanks,

Reginald A. Slade
Team Leader/Information Managment Officer (IMO) Office of Air and Radiation
202 564-1346

-----Original Message-----
From: Noga, Vaughn
Sent: Tuesday, June 04, 2013 12:54 PM
To: Clark, Dee; Grantham, Jessica; DAVIS, TANIKA
Cc: Slade, Reginald; Simmons, Joseph; Lee, Maja; Reilly, Tom; Aydlett, Dwayne; Beaver, William; Lanier, Lynsey
Subject: RE: Detailed Billing for Gina McCarthy

Is there a suspense date associated with this request?

-----Original Message-----
From: Clark, Dee
Sent: Tuesday, June 04, 2013 11:38 AM
To: Grantham, Jessica; DAVIS, TANIKA
Cc: Slade, Reginald; Simmons, Joseph; Noga, Vaughn; Lee, Maja; Reilly, Tom; Aydlett, Dwayne; Beaver, William; Lanier, Lynsey
Subject: FW: Detailed Billing for Gina McCarthy
Importance: High

Jessica/Tanika,

Please provide the Call Detail Records (CDRs) requested by OAR for Gina McCarthy.

Thanks,

Dee Clark
WCF Service Manager for MD, YA, LD, LE, & LF ATPOC for TDD 04 & 09 (ITS-ACT II) ITIL v3 Foundation Level Certified U.S. EPA | OEI |OTOP | EDSD | EPA West - 6312L | clark.dee@epa.gov | 202-566-0890 office |202-297-5756 cell

---

From: Simmons, Joseph
Sent: Tuesday, June 04, 2013 9:57 AM
To: EPA Call Center with questions
Cc: Clark, Dee; Slade, Reginald
Subject: Detailed Billing for Gina McCarthy

This message is to request detailed billing for Gina McCarthy's mobile devices for the dates of July 1, 2009 to June 30, 2012. The devices are:

1. AT&T Torch - phone number (202) 596-0247/PIN 25D417C4.

2. Verizon Cell Phone - phone number (202) 596-4548.

This request is in response to a FOIA request from Congress. Feel free to contact me if you have any questions or concerns.

Thanks

Joseph
OAR/OPMO
202-564-1296

From: Dominguez, Daniel
To: Minoli, Kevin
Subject: RE: Due date for text bill FOIA
Date: Thursday, July 18, 2013 2:01:38 PM

Thanks for getting this information to me Kevin. Having the benefit of the discussion below is also useful.

Sorry we've missed each other today. I should be at my desk when you duck out of your meetings this afternoon. I appreciate you ringing me back a couple of times.

Thanks!

DD

From: Minoli, Kevin [mailto:Minoli.Kevin@epa.gov]
Sent: Thursday, July 18, 2013 10:30 AM
To: Dominguez, Daniel
Subject: Fw: Due date for text bill FOIA

Fyi

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

From: Weinstock, Larry
Sent: Tuesday, July 16, 2013 10:08:55 AM
To: Minoli, Kevin; Kelly, Lynn; Ketcham-Colwill, Nancy; Miller, Kevin
Subject: RE: Due date for text bill FOIA

This is what I have in response to your request:

1. The response to the original request for texts on 18 specific days (number 6005)

2. Our final response

3. The request for the phone bill (6937)

4. The acknowledgment letter from the FOIA Office

5. The fee waiver from the FOIA office

6. The request for clarification on phone or text bills

7. His response to the request for clarification

I am also including:

8. His second request for texts on personal devices (6939)

9. Our final response

10. The texting bill - the count on the bill is: Total texts: 5402 texts 146 a month a little less than 5 day.

Hope this helps
Larry

From: Minoli, Kevin
Sent: Monday, July 15, 2013 7:28 PM
To: Kelly, Lynn; Ketcham-Colwill, Nancy; Miller, Kevin
Cc: Weinstock, Larry
Subject: RE: Due date for text bill FOIA

(b)(5) AWP, (b)(5) ACP, (b)(5) DPP [redacted]

[redacted]

[redacted]

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: Kelly, Lynn
Sent: Monday, July 15, 2013 7:11 PM
To: Ketcham-Colwill, Nancy; Miller, Kevin
Cc: Weinstock, Larry; Minoli, Kevin
Subject: RE: Due date for text bill FOIA

(b)(5) AWP, (b)(5) ACP, (b)(5) DPP [redacted]

(b)(5) AWP, (b)(5) ACP, (b)(5) DPP [redacted]

[redacted]

[redacted]

[redacted]

[redacted]

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

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From: Ketcham-Colwill, Nancy
Sent: Monday, July 15, 2013 6:57 PM
To: Kelly, Lynn; Miller, Kevin
Cc: Weinstock, Larry
Subject: Due date for text bill FOIA

Lynn, my apologies for missing your earlier email; Outlook stopped updating my email a while back.

(b)(5) AWP, (b)(5) ACP, (b)(5) DPP [redacted]

[redacted]

Look forward to talking tomorrow morning. My schedule is strangely wide open, so just let me know when would be good.

From: Kelly, Lynn
Sent: Monday, July 15, 2013 6:36 PM
To: Ketcham-Colwill, Nancy; Minoli, Kevin; Johnson, Alisha; Weinstock, Larry; Miller, Kevin
Cc: Hamilton, Sabrina
Subject: RE: CEI Sues EPA for Gina McCarthy's Text and Training Records

(b)(5) AWP, (b)(5) ACP, (b)(5) DPP [redacted]

[redacted]

[redacted]

[redacted]

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

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From: Ketcham-Colwill, Nancy
Sent: Monday, July 15, 2013 6:31 PM
To: Minoli, Kevin; Johnson, Alisha; Kelly, Lynn; Weinstock, Larry; Miller, Kevin
Cc: Hamilton, Sabrina
Subject: RE: CEI Sues EPA for Gina McCarthy's Text and Training Records

(b)(5) AWP, (b)(5) ACP, (b)(5) DPP [redacted]

From: Minoli, Kevin
Sent: Monday, July 15, 2013 3:28 PM
To: Johnson, Alisha; Ketcham-Colwill, Nancy; Kelly, Lynn; Weinstock, Larry; Miller, Kevin
Cc: Goffman, Joseph
Subject: RE: CEI Sues EPA for Gina McCarthy's Text and Training Records

(b)(5) AWP, (b)(5) ACP, (b)(5) DPP [redacted] 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: Johnson, Alisha
Sent: Monday, July 15, 2013 3:26 PM
To: Ketcham-Colwill, Nancy; Kelly, Lynn; Weinstock, Larry; Minoli, Kevin; Miller, Kevin
Cc: Goffman, Joseph
Subject: RE: CEI Sues EPA for Gina McCarthy's Text and Training Records

(b)(5) AWP, (b)(5) ACP, . Kevin?

From: Ketcham-Colwill, Nancy
Sent: Monday, July 15, 2013 3:26 PM
To: Kelly, Lynn; Weinstock, Larry; Minoli, Kevin; Miller, Kevin; Johnson, Alisha
Cc: Goffman, Joseph
Subject: RE: CEI Sues EPA for Gina McCarthy's Text and Training Records

(b)(5) AWP, (b)(5) ACP, (b)(5) DPP [redacted]

From: Ketcham-Colwill, Nancy
Sent: Monday, July 15, 2013 2:44 PM
To: Kelly, Lynn; Weinstock, Larry; Minoli, Kevin; Miller, Kevin; Johnson, Alisha
Cc: Goffman, Joseph
Subject: RE: CEI Sues EPA for Gina McCarthy's Text and Training Records

(b) (5) DPP, (b) (5) ACP [redacted]

(b)(5) AWP, (b)(5) ACP, (b)(5) DPP

From: Kelly, Lynn
Sent: Monday, July 15, 2013 2:20 PM
To: Weinstock, Larry; Minoli, Kevin; Ketcham-Colwill, Nancy; Miller, Kevin
Subject: RE: CEI Sues EPA for Gina McCarthy's Text and Training Records

(b)(5) AWP, (b)(5) ACP, (b)(5) DPP [redacted]

[redacted]

[redacted]

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

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From: Weinstock, Larry
Sent: Monday, July 15, 2013 2:05 PM
To: Minoli, Kevin; Kelly, Lynn; Ketcham-Colwill, Nancy; Miller, Kevin
Subject: RE: CEI Sues EPA for Gina McCarthy's Text and Training Records

[redacted] (b)(5) AW [redacted]

[redacted])

(b)(5) AWP, (b)(5) ACP, (b)(5) DPP [redacted].

Larry

From: Minoli, Kevin
Sent: Monday, July 15, 2013 1:38 PM
To: Kelly, Lynn; Ketcham-Colwill, Nancy; Weinstock, Larry; Miller, Kevin
Subject: RE: CEI Sues EPA for Gina McCarthy's Text and Training Records

Thanks. (b)(5) AWP, (b)(5) ACP, (b)(5) DPP [redacted]

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: Monday, July 15, 2013 1:27 PM
To: Minoli, Kevin; Ketcham-Colwill, Nancy; Weinstock, Larry; Miller, Kevin
Subject: RE: CEI Sues EPA for Gina McCarthy's Text and Training Records

Just reading now.

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

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From: Minoli, Kevin
Sent: Monday, July 15, 2013 1:26 PM
To: Ketcham-Colwill, Nancy; Weinstock, Larry; Kelly, Lynn; Miller, Kevin
Subject: Fw: CEI Sues EPA for Gina McCarthy's Text and Training Records

Hey folks- do we have a copy of the complaint?

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

Direct Dial: 564-5551

From: Johnson, Alisha
Sent: Monday, July 15, 2013 1:05:26 PM
To: Minoli, Kevin
Subject: Fw: CEI Sues EPA for Gina McCarthy's Text and Training Records

Fyi - (b)(5) AWP, (b)(5) ACP, (b)(5) DPP [redacted]

From: Emily Yehle <eyehle@eenews.net>
Sent: Monday, July 15, 2013 1:02:31 PM
To: Johnson, Alisha
Subject: FW: CEI Sues EPA for Gina McCarthy's Text and Training Records

Alisha,

Any comment on this lawsuit? Deadline is 3.

Thanks!

Emily Yehle
Reporter
eyehle@eenews.net
202-446-0437 (p)
202-737-5299 (f)

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From: Brian McNicoll <bmac@cei.org>
Date: July 15, 2013, 12:01:38 PM EDT
To: <jplautz@eenews.net>
Subject: CEI Sues EPA for Gina McCarthy's Text and Training Records

Contact:
Brian McNicoll, 202-331-2765

CEI Sues EPA for Gina McCarthy's Text and Training Records

Nearing Senate Confirmation Vote, Nominee Remains Shielded by Agency Stonewalling

WASHINGTON, D.C., July 15, 2013 – The Competitive Enterprise Institute filed suit today in federal court to force the Environmental Protection Agency to turn over phone bills for the EPA-issued PDA issued to Gina McCarthy, a top EPA official and President Obama's nominee to serve as the next administrator.

CEI's suit also seeks records EPA has failed to turn over that would reflect whether McCarthy received and/or acknowledged the required training in EPA electronic record use and preservation 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." A similar, contemporaneous request produced "Scholar of Ethics" awards to the false identity assumed by the woman McCarthy seeks to replace, former administrator Lisa Jackson. EPA has failed to provide any evidence of McCarthy receiving the required training.

A Senate vote on McCarthy's nomination could come as soon as this week despite several unanswered questions involving her electronic correspondence and recordkeeping practices, including why EPA is withholding thousands of her emails about the "war on coal" in a lawsuit and unlawfully refusing to produce even factual information such as the dates, parties and subject matter.

"Obama's EPA is waving red flags all over the place," said **Christopher Horner**, Senior Fellow at CEI and author of "The Liberal War on Transparency," research for which turned up the 'Richard Windsor' fake name email scandal and other evidence of EPA avoiding disclosure requirements. "Ultimately, we will learn if EPA's problems with non-official email accounts, and accounts not identifying the account holder, extend to their use of private accounts for texting or even destroying this alternative to email, as it seems. Resolving the questions in today's suit, and about her use of a personal account, should be necessary conditions to moving forward on her nomination. This also would do much to address the growing impression Gina McCarthy has something to hide and that EPA is going to great lengths to help her hide it."

CEI submitted the IT-training request under the Freedom of Information Act in April, as well as one for text messages from McCarthy's EPA-issued phone on 18 specific dates. The latter request came after CEI was reliably informed McCarthy was warned to stop texting after concerns about the propriety of messages, specifically those sent on days she appeared before Congress.

EPA has claimed it has no such text messages. CEI then sought McCarthy's relevant phone bills, which should establish whether she used the text feature as an alternative to email on her EPA-assigned device, including on those dates. In a separate request, presently on administrative appeal, CEI also seeks work-related

text messages from McCarthy's non-EPA-issued phone, which under EPA rules are public records subject to FOIA and which McCarthy is in fact responsible for turning over to EPA without being asked.

EPA has indicated satisfying CEI's request for phone bills would take two hours or less. But to further expedite matters CEI narrowed the request to seek only those portions that reflect text activity. If those records were created, on any device, EPA must explain what happened between those records being created and their "no records" response. The interim step between creation and claiming "no records," is that they have been destroyed – a violation of federal law.

EPA has apparently yet to include text messages in response to any request for records whether from Congress or through the FOIA process, although the law plainly says these messages are public records. CEI's investigation of EPA's transparency practices has revealed a pattern of resistance to disclosure of its activities. Already this has led to an Inspector General inquiry into EPA's instant messaging practices, presumably including whether EPA preserves IMs as required.

"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.]"

Horner noted a pattern of efforts on behalf of EPA to protect McCarthy until she can be approved by the Senate. Already, in response to a court order for EPA to turn over about 12,000 emails related to "climate" and "coal," the dog not barking in those relatively few emails EPA did turn over was McCarthy, even though she is the lieutenant in charge of such matters. Thousands of those emails that were produced were heavily, sometimes comically redacted despite a directive from President Obama that FOIA requests should be treated with "a presumption of disclosure." These records did nonetheless reveal McCarthy was among the circle with whom Jackson used the false identity "Richard Windsor," rather than her own name, on email communications with top staffers and key outside allies. Jackson resigned after the court order to produce them, apparently to avoid answering questions about her decision to conduct certain official correspondence as such.

Other EPA executives, including Jim Martin, director of EPA's Region 8 in Denver, have resigned after having been found during litigation initiated by CEI to have regularly used a private email account to conduct official business. CEI similarly awaits emails from the Region 9 administrator's Comcast email account which he used for EPA-related correspondence. EPA's general counsel also resigned the day Horner released copies of screen shots establishing that the Windsor account was installed on Jackson's EPA computers.

"This particular case is one step on the path to determining the extent to which

EPA is not meeting its obligations to keep the public informed," Horner said. "EPA should have moved matters along by now, particularly with Ms. McCarthy subject to scrutiny for a promotion."

► **Read the filed complaint here.**

CEI is a non-profit, non-partisan public policy group dedicated to the principles of free enterprise and limited government. For more information about CEI, please visit our website, cei.org, and blogs, Globalwarming.org and OpenMarket.org. Follow CEI on Twitter! Twitter.com/ceidotorg.

Email Marketing by

This message was sent to jplautz@eenews.net from:

Competitive Enterprise Institute | 1899 L Street NW 12th Floor | Washington, DC 20036

Unsubscribe | **Forward To a Friend**

```
********************** ATTACHMENT NOT DELIVERED  ******************

This Email message contained an attachment named
  image001.jpg
which may be a computer program. This attached computer program could
contain a computer virus which could cause harm to EPA's computers,
network, and data.  The attachment has been deleted.

This was done to limit the distribution of computer viruses introduced
into the EPA network.  EPA is deleting all computer program attachments
sent from the Internet into the agency via Email.

If the message sender is known and the attachment was legitimate, you
should contact the sender and request that they rename the file name
extension and resend the Email with the renamed attachment.  After
receiving the revised Email, containing the renamed attachment, you can
rename the file extension to its correct name.

For further information, please contact the EPA Call Center at
(866) 411-4EPA (4372). The TDD number is (866) 489-4900.

**********************  ATTACHMENT NOT DELIVERED **********************
```

From: Minoli, Kevin
To: McDermott, Marna
Subject: RE: EPA-HQ-2013-008908 Christopher Horner fee waiver determination
Date: Friday, August 23, 2013 12:21:00 PM

(b) (5) DPP, (b) (5) ACP [redacted] 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: McDermott, Marna
Sent: Friday, August 23, 2013 11:41 AM
To: Minoli, Kevin
Subject: Fw: EPA-HQ-2013-008908 Christopher Horner fee waiver determination

(b) (5) DPP, (b) (5) ACP [redacted]

From: Weinstock, Larry
Sent: Friday, August 23, 2013 11:39:09 AM
To: Miller, Kevin; McDermott, Marna
Cc: Ketcham-Colwill, Nancy
Subject: FW: EPA-HQ-2013-008908 Christopher Horner fee waiver determination

(b) (5) DPP, (b) (5) ACP [redacted] ?

Larry

From: Ketcham-Colwill, Nancy
Sent: Friday, August 23, 2013 11:18 AM
To: Weinstock, Larry
Subject: FW: EPA-HQ-2013-008908 Christopher Horner fee waiver determination

From: Ketcham-Colwill, Nancy
Sent: Tuesday, August 13, 2013 7:05 PM
To: Miller, Kevin; McDermott, Marna
Subject: FW: EPA-HQ-2013-008908 Christopher Horner fee waiver determination

(b) (5) DPP, (b) (5) ACP [redacted]

(b) (5) DPP, (b) (5) ACP [redacted] Please advise. Thanks!

From: Newton, Jonathan
Sent: Tuesday, August 13, 2013 6:42 PM
To: Ketcham-Colwill, Nancy; Wachter, Eric
Cc: Weinstock, Larry; Minoli, Kevin; Gottesman, Larry; McDermott, Marna; Hamilton, Sabrina
Subject: RE: EPA-HQ-2013-008908 Christopher Horner fee waiver determination

Hi Nancy,

(b) (5) DPP, (b) (5) ACP [redacted]

Thanks,
Jonathan

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

From: Ketcham-Colwill, Nancy
Sent: Tuesday, August 13, 2013 5:49 PM
To: McDermott, Marna; Hamilton, Sabrina; Newton, Jonathan
Cc: Weinstock, Larry; Minoli, Kevin; Gottesman, Larry
Subject: RE: EPA-HQ-2013-008908 Christopher Horner fee waiver determination

(b) (5) DPP, (b) (5) ACP [redacted]. Thanks.

From: McDermott, Marna
Sent: Tuesday, August 13, 2013 5:02 PM
To: Hamilton, Sabrina; Newton, Jonathan
Cc: Ketcham-Colwill, Nancy; Weinstock, Larry; Minoli, Kevin; Gottesman, Larry
Subject: RE: EPA-HQ-2013-008908 Christopher Horner fee waiver determination

(b) (5) DPP, (b) (5) ACP [redacted]

(b) (5) DPP, (b) (5) ACP [redacted]

[redacted]

Thanks,
Marna

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

From: Hamilton, Sabrina
Sent: Tuesday, August 13, 2013 3:57 PM
To: Newton, Jonathan
Cc: Ketcham-Colwill, Nancy; McDermott, Marna; Weinstock, Larry
Subject: FW: EPA-HQ-2013-008908 Christopher Horner fee waiver determination

Jonathan,

Please see message from Larry Weinstock below.

Sabrina

From: Newton, Jonathan
Sent: Tuesday, August 13, 2013 1:51 PM
To: Weinstock, Larry
Cc: Hamilton, Sabrina
Subject: EPA-HQ-2013-008908 Assigned to AO?

Hey Larry,

(b) (5) DPP, (b) (5) ACP [redacted]?

Thanks,
Jonathan

Jonathan V. Newton, Atttorney-Advisor
U.S. EPA, Office of the Executive Secretariat

1200 Pennsylvania Avenue, NW (MC 1105A)
Washington, D.C. 20460
(202) 566-1981

From: Weinstock, Larry
Sent: Friday, August 09, 2013 8:45 AM
To: Hamilton, Sabrina
Cc: Ketcham-Colwill, Nancy
Subject: RE: EPA-HQ-2013-008908 Christopher Horner fee waiver determination

(b) (5) DPP, (b) (5) ACP

From: Hamilton, Sabrina
Sent: Friday, August 09, 2013 7:58 AM
To: Weinstock, Larry
Cc: Ketcham-Colwill, Nancy
Subject: FW: EPA-HQ-2013-008908 Christopher Horner fee waiver determination

Larry,

(b) (5) DPP, (b) (5) ACP

Please advise.

Sabrina

From: Hamilton, Sabrina
Sent: Thursday, August 08, 2013 11:42 AM
To: Newton, Jonathan; Boyd, Rory
Cc: Warden, Vivian
Subject: FW: EPA-HQ-2013-008908 Christopher Horner fee waiver determination

Jonathan/Rory,

(b) (5) DPP, (b) (5) ACP

Thanks

Sabrina

From: Weinstock, Larry
Sent: Thursday, August 08, 2013 11:17 AM
To: Hamilton, Sabrina
Cc: Ketcham-Colwill, Nancy
Subject: RE: EPA-HQ-2013-008908 Christopher Horner fee waiver determination

(b) (5) DPP, (b) (5) ACP

Larry

From: Hamilton, Sabrina
Sent: Thursday, August 08, 2013 10:52 AM
To: Weinstock, Larry
Cc: Ketcham-Colwill, Nancy
Subject: FW: EPA-HQ-2013-008908 Christopher Horner fee waiver determination

Larry,

Please check FOIAonline for the attached assignment. Please "Perfect" the case if you are the person that will be responsible for this assignment. Please note that the request is not being billed for charges.

Sabrina

From: Warden, Vivian
Sent: Thursday, August 08, 2013 10:43 AM
To: Hamilton, Sabrina; Hammond, Gloria
Subject: EPA-HQ-2013-008908 Christopher Horner fee waiver determination

This is to let you know that request EPA-HQ-2013-008908 has been assigned to OAR, and that today the requester was sent a "not billable" fee waiver determination. If you have any questions regarding this, please call Larry Gottesman. Thank you.

Vivian Warden
FOIA Specialist
202-566-1663

FOIA and Privacy Branch
202-566-1667 (main FOIA office line)

From: Anderson, Cindy
To: Ketcham-Colwill, Nancy; Huang, Cindy
Cc: Hilton, Patricia; Minoli, Kevin; Weinstock, Larry; Miller, Kevin
Subject: RE: FOIA request EPA-HQ-2013-005618 (from CEI for records regarding Gina McCarthy"s IT and record-keeping training)
Date: Wednesday, July 31, 2013 3:20:04 PM
Importance: High

Thanks Nancy –

And Thanks all.

Kevin Miller and Kevin Minoli –

(b)(5) AWP [redacted]

Cindy Anderson
EPA/OGC
(202) 564-2690

From: Ketcham-Colwill, Nancy
Sent: Wednesday, July 31, 2013 3:17 PM
To: Anderson, Cindy; Huang, Cindy
Cc: Hilton, Patricia; Minoli, Kevin; Weinstock, Larry; Miller, Kevin
Subject: RE: FOIA request EPA-HQ-2013-005618 (from CEI for records regarding Gina McCarthy's IT and record-keeping training)

Cindy H – Thanks for finding these items and getting them to Cindy A.
Cindy A – (b)(5) DPP, (b)(5) ACP, (b)(5) AWP [redacted]

From: Anderson, Cindy
Sent: Wednesday, July 31, 2013 1:51 PM
To: Huang, Cindy
Cc: Ketcham-Colwill, Nancy; Hilton, Patricia
Subject: RE: FOIA request EPA-HQ-2013-005618 (from CEI for records regarding Gina McCarthy's IT and record-keeping training)
Importance: High

Thanks so much Cindy.

(b)(5) DPP, (b)(5) ACP, (b)(5) AWP [redacted]

st

(b)(5) DPP, (b)(5) ACP, (b)(5) AWP [redacted]

[redacted]

[redacted]

[redacted]

Let's plan to discuss tomorrow or after (after I sort out the production to ATI that's due tomorrow).
Thanks all –

Cindy
564-2690

From: Huang, Cindy
Sent: Wednesday, July 31, 2013 1:26 PM
To: Anderson, Cindy
Subject: FW: FOIA request EPA-HQ-2013-005618 (from CEI for records regarding Gina McCarthy's IT and record-keeping training)

(b)(5) DPP, (b)(5) ACP, (b)(5) AWP [redacted]

Sincerely,
Cindy

Office of Air and Radiation, U.S. EPA | Ariel Rios North Room 5406, 1200 Pennsylvania Ave., NW, Washington, D.C. 20460 | office: (202) 564-2618

From: Ketcham-Colwill, Nancy
Sent: Wednesday, July 31, 2013 11:38 AM
To: Slade, Reginald; Huang, Cindy; Weinstock, Larry
Cc: Salgado, Omayra

Subject: RE: FOIA request EPA-HQ-2013-005618 (from CEI for records regarding Gina McCarthy's IT and record-keeping training)

Thanks, Reggie. (b) (5) DPP, (b) (5) ACP

[redacted] c..

From: Slade, Reginald
Sent: Wednesday, July 31, 2013 8:21 AM
To: Ketcham-Colwill, Nancy; Huang, Cindy
Cc: Salgado, Omayra; Weinstock, Larry
Subject: RE: FOIA request EPA-HQ-2013-005618 (from CEI for records regarding Gina McCarthy's IT and record-keeping training)

Dear Nancy,

(b)(5) DPP, (b)(5) ACP, (b)(5) AWP [redacted]

Hope this helps.

Many thanks,

Reginald A. Slade
Team Leader/Information Managment Officer (IMO)
Office of Air and Radiation
202 564-1346

From: Ketcham-Colwill, Nancy
Sent: Monday, July 29, 2013 6:43 PM
To: Huang, Cindy; Slade, Reginald
Cc: Salgado, Omayra; Weinstock, Larry
Subject: RE: FOIA request EPA-HQ-2013-005618 (from CEI for records regarding Gina McCarthy's IT and record-keeping training)

Thanks, Cindy. (b)(5) DPP, (b)(5) ACP, (b)(5) AWP [redacted].

(b)(5) DPP, (b)(5) ACP, (b)(5) AWP [redacted] Thank you.

From: Huang, Cindy
Sent: Monday, July 29, 2013 4:20 PM
To: Ketcham-Colwill, Nancy; Slade, Reginald
Cc: Salgado, Omayra; Weinstock, Larry
Subject: RE: FOIA request EPA-HQ-2013-005618 (from CEI for records regarding Gina McCarthy's IT

and record-keeping training)

(b)(5) DPP, (b)(5) ACP, (b)(5) AWP [redacted]

Office of Air and Radiation, U.S. EPA | Ariel Rios North Room 5406, 1200 Pennsylvania Ave., NW, Washington, D.C. 20460 | office: (202) 564-2618

From: Ketcham-Colwill, Nancy
Sent: Monday, July 29, 2013 1:34 PM
To: Huang, Cindy; Slade, Reginald
Cc: Salgado, Omayra; Weinstock, Larry
Subject: FW: FOIA request EPA-HQ-2013-005618 (from CEI for records regarding Gina McCarthy's IT and record-keeping training)
Importance: High

Cindy and Reggie – (b)(5) DPP, (b)(5) ACP, (b)(5) AWP [redacted]

Nancy

From: Anderson, Cindy
Sent: Monday, July 29, 2013 11:15 AM
To: Miller, Kevin; Weinstock, Larry; Ketcham-Colwill, Nancy
Cc: Hilton, Patricia; Gottesman, Larry
Subject: RE: FOIA request EPA-HQ-2013-005618 (from CEI for records regarding Gina McCarthy's IT and record-keeping training)
Importance: High

All –

(b)(5) DPP, (b)(5) ACP, (b)(5) AWP [redacted]

[redacted]

(b)(5) DPP, (b)(5) ACP, (b)(5) AWP

Let's plan to discuss this response later this week.

(b)(5) DPP, (b)(5) ACP, (b)(5) AWP

Thanks!
Cindy Anderson
EPA/OGC
(202) 564-2690

From: Miller, Kevin
Sent: Friday, July 26, 2013 2:07 PM
To: Weinstock, Larry; Ketcham-Colwill, Nancy
Cc: Hilton, Patricia; Anderson, Cindy
Subject: FW: FOIA request EPA-HQ-2013-005618 (from CEI for records regarding Gina McCarthy's IT and record-keeping training)

Larry and Nancy,

(b)(5) DPP, (b)(5) AWP

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: Hilton, Patricia
Sent: Friday, July 26, 2013 1:29 PM
To: Miller, Kevin; Anderson, Cindy
Cc: Gottesman, Larry; Maher, Karen
Subject: RE: FOIA request EPA-HQ-2013-005618 (from CEI for records regarding Gina McCarthy's IT and record-keeping training)

Yes, of course. It's now attached.

Patricia Hilton (Pat), Special Assistant
Office of Technology Operations and Planning (OTOP)
Office of Environmental Information (OEI)
Office (202) 566-1636
Fax (202) 566-0319

From: Miller, Kevin
Sent: Friday, July 26, 2013 1:18 PM
To: Hilton, Patricia; Anderson, Cindy
Cc: Gottesman, Larry; Maher, Karen
Subject: RE: FOIA request EPA-HQ-2013-005618 (from CEI for records regarding Gina McCarthy's IT and record-keeping training)

Patricia,

(b)(5) DPP, (b)(5) AWP

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

From: Hilton, Patricia
Sent: Friday, July 26, 2013 1:02 PM
To: Anderson, Cindy
Cc: Gottesman, Larry; Miller, Kevin; Maher, Karen
Subject: RE: FOIA request EPA-HQ-2013-005618 (from CEI for records regarding Gina McCarthy's IT and record-keeping training)

Hi Cindy,

(b)(5) DPP, (b)(5) AWP

Thanks, Pat

Patricia Hilton (Pat), Special Assistant
Office of Technology Operations and Planning (OTOP)
Office of Environmental Information (OEI)
Office (202) 566-1636
Fax (202) 566-0319

From: Anderson, Cindy
Sent: Friday, July 26, 2013 10:19 AM
To: Hilton, Patricia
Cc: Gottesman, Larry; Miller, Kevin
Subject: FOIA request EPA-HQ-2013-005618 (from CEI for records regarding Gina McCarthy's IT and record-keeping training)
Importance: High

Ms. Hilton –

(b)(5) DPP, (b)(5) AWP [redacted]

[redacted]

[redacted]

[redacted]

[redacted]

Thanks for your assistance; please feel free to call me.

Cindy Anderson
EPA/OGC
(202) 564-2690

From: Minoli, Kevin
To: Grantham, Nancy; Vaught, Laura; Distefano, Nichole; Dierker, Carl
Cc: Anderson, Cindy; Albright, Scott
Subject: RE: Heads up on a New FOAI Assignment (EPA-HQ-2014-002006) - FOIA re Text Messages
Date: Thursday, January 09, 2014 11:42:00 AM

Hi Nancy-(b)(5) DPP, (b)(5) AWP [redacted]

Thanks, 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: Grantham, Nancy
Sent: Thursday, January 09, 2014 6:21 AM
To: Vaught, Laura; Distefano, Nichole; Dierker, Carl; Minoli, Kevin
Subject: Fw: Heads up on a New FOAI Assignment (EPA-HQ-2014-002006) - FOIA re Text Messages
Importance: High

(b) (5) DPP, (b) (5) ACP [redacted]

From: Schena, Cristeen
Sent: Wednesday, January 08, 2014 1:38:08 PM
To: Grantham, Nancy
Subject: FW: Heads up on a New FOAI Assignment (EPA-HQ-2014-002006) - FOIA re Text Messages

(b)(5) DPP [redacted]

(b)(5) DPP [redacted] Keep me posted ☺

Cris

From: Hamilton, Sabrina
Sent: Wednesday, January 08, 2014 1:31 PM
To: Lewis, Monica; Meekins, Tanya; Russell, Sherry; Painter, Michele; Newton, Jonathan; Bruce, Barbara
Cc: Faulkner, Martha; Hammond, Gloria; Weinstock, Larry; Schena, Cristeen

Subject: FW: Heads up on a New FOAI Assignment (EPA-HQ-2014-002006)

Monica,

Please assign a task for this FOIA case to Region 1 for coordination with OAR. Larry Weinstock is the point of contact and he and Jonathan Newton has provided feedback concerning this case in the emails below.

Tanya, Sherry, Michele, Jonathan and Barbara,

Please check FOIAonline for a "task" that was assigned to your office for coordination with OAR-IO. Please provide responsive document by January 16, 2014. If you have any questions, please contact Larry Weinstock. Thanks

Sabrina

Sabrina Hamilton
Air and Radiation Liaison Specialist
and FOIA Coordinator
Office of Air and Radiation - Correspondence Unit
U.S. Environmental Protection Agency (EPA)
1200 Pennsylvania Avenue, N.W. (6101-A)
Washington, D.C. 20460
Tel: (202) 564-1083
Fax: (202) 501-0600

From: Weinstock, Larry
Sent: Thursday, January 02, 2014 3:40 PM
To: McCabe, Janet; Goffman, Joseph; Russell, Sherry; Huang, Cindy; Meekins, Tanya; Painter, Michele
Cc: Noonan, Jenny; Stewart, Lori; Hamilton, Sabrina
Subject: Heads up on a New FOAI Assignment (EPA-HQ-2014-002006)

EPA has received the attached FOIA from Chris Horner. It is a follow-up from an earlier FOIA concerning Gina's text bill (b) (5) DPP, (b) (5) ACP [redacted] As a result Mr. Horner is asking for all the text messages, on EPA provided cell phones from the following people:

1) **Joe Goffman,** Senior Counsel OAR

2) **Janet McCabe**

3) **Margo Oge**, OTAQ (retired late 2012)

4) **Cindy Huang**, Staff Assistant To the Assistant Administrator

5) Scott Fulton, former EPA General Counsel

6) Steve Page, Director, OAQPS, Research Triangle Park (RTP)

7) Peter Tsirigotis, Director, Sector Policies and Programs Division, OAR:OAQPS, RTP

8) Mlke Flynn, Director, Office of Radiation and Indoor Air, EPA HQ

9) Bob Perciasepe

10) Curt Spalding, Regional Administrator EPA Region

11) Nancy Grantham, Director, EPA Rl, Office of Public Affairs

12) Ira W. Leighton, former deputy RA, Region

(b) (5) DPP, (b) (5) ACP [redacted]

[redacted]

Thanks
Larry Weinstock
Program Innovaiton Coordinator
Office of Air and Radiation
202-564-9226

From: Weinstock, Larry
Sent: Monday, December 30, 2013 2:39 PM
To: Faulkner, Martha; Stewart, Lori
Cc: Hamilton, Sabrina
Subject: RE: New FOAI Assignment (EPA-HQ-2014-002006)

Martha,

(b) (5) DPP, (b) (5) ACP [redacted]. I need to see the more detailed information in the attachment.

Thanks
Larry

From: Faulkner, Martha
Sent: Monday, December 30, 2013 2:32 PM
To: Stewart, Lori

Cc: Weinstock, Larry; Hamilton, Sabrina
Subject: New FOAI Assignment (EPA-HQ-2014-002006)

Good Afternoon Lori ,

Please advise which office should be assigned this control. Thanks

Martha

From: Newton, Jonathan
Sent: Friday, December 27, 2013 1:59 PM
To: Lewis, Monica; Hamilton, Sabrina
Cc: Gottesman, Larry
Subject: HQ-2014-0002006 - Reassignment to OAR

Hi Monica and Sabrina,

This is a request seeking text messages from twelve individuals: Joe Goffman (OAR); Janet McCabe (OAR); Margo Oge (OAR); Cindy Huang (OAR); Steve Page (OAR); Peter Tsirigotis (OAR); Mike Flynn (OAR); Curt Spalding (R1); Nancy Grantham (R1); Bob Perciasepe (AO); Scott Fulton (Formerly OGC); and Ira W. Leighton (Formerly R1).

(b)(5) DPP [redacted]

Thanks

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: Anderson, Cindy
To: Minoli, Kevin
Subject: RE: Heads up on a New FOAI Assignment (EPA-HQ-2014-002006) - FOIA re Text Messages
Date: Thursday, January 16, 2014 9:18:57 PM

(b) (5) DPP, (b) (5) ACP [redacted]

[redacted]

[redacted]

[redacted]

[redacted]

Cindy Anderson
EPA/OGC
(202) 564-2690

From: Minoli, Kevin
Sent: Thursday, January 16, 2014 6:11 PM
To: Anderson, Cindy; Miller, Kevin
Subject: RE: Heads up on a New FOAI Assignment (EPA-HQ-2014-002006) - FOIA re Text Messages

(b) (5) DPP, (b) (5) ACP [redacted]. 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: Thursday, January 16, 2014 5:12 PM
To: Minoli, Kevin; Miller, Kevin
Subject: RE: Heads up on a New FOAI Assignment (EPA-HQ-2014-002006) - FOIA re Text Messages

(b) (5) DPP, (b) (5) ACP [redacted]

Cindy Anderson
(202) 564-2690

From: Minoli, Kevin
Sent: Thursday, January 16, 2014 5:06 PM
To: Anderson, Cindy; Miller, Kevin
Subject: Fw: Heads up on a New FOAI Assignment (EPA-HQ-2014-002006) - FOIA re Text Messages

(b) (5) DPP, (b) (5) ACP [redacted] ? Thanks.

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

From: Dierker, Carl
Sent: Thursday, January 16, 2014 5:02:20 PM
To: Minoli, Kevin
Cc: Metcalf, Jill; Grantham, Nancy
Subject: FW: Heads up on a New FOAI Assignment (EPA-HQ-2014-002006) - FOIA re Text Messages

Hi Kevin – (b) (5) DPP, (b) (5) ACP [redacted]

Thanks,
Carl
****
Carl F. Dierker
Regional Counsel
U.S. EPA -- Region 1, New England
5 Post Office Square
Boston, Massachusetts 02109-3912

tel: 617-918-1091
fax: 617-918-0091
e-mail: dierker.carl@epa.gov

From: Grantham, Nancy
Sent: Tuesday, January 14, 2014 1:00 PM
To: Schena, Cristeen
Cc: Minoli, Kevin; Dierker, Carl; Metcalf, Jill
Subject: FW: Heads up on a New FOAI Assignment (EPA-HQ-2014-002006) - FOIA re Text Messages

Cris – (b) (5) DPP, (b) (5) ACP [redacted]

Kevin in OGC – (b) (5) DPP, (b) (5) ACP [redacted]

Thanks

ng

From: Diehl, Chris
Sent: Monday, January 13, 2014 9:12 PM
To: Grantham, Nancy
Cc: Giffen, Tom
Subject: FW: Heads up on a New FOAI Assignment (EPA-HQ-2014-002006) - FOIA re Text Messages

Nancy – (b)(5) DPP [redacted] Please let us know what else we can do to help.

Thx Chris

Chris Diehl
Chief, Operations & Client Support Section
Desk: 617-918-1944
Cell: 857-829-8012

From: Giffen, Tom
Sent: Monday, January 13, 2014 10:38 AM
To: Diehl, Chris
Subject: FW: Heads up on a New FOAI Assignment (EPA-HQ-2014-002006) - FOIA re Text Messages

Chris,

(b)(5) DPP [redacted]. Let me know if you need anything else.

Thanks,

Tom Giffen
Chief, Information Technology Section
EPA Region 1 OARM
5 Post Office Square, Suite 100
MailCode OARM0201
Boston, MA 02109-3912
617-918-1444

From: Little, Douglas
Sent: Monday, January 13, 2014 10:35 AM
To: Giffen, Tom
Subject: RE: Heads up on a New FOAI Assignment (EPA-HQ-2014-002006) - FOIA re Text Messages

Tom,
Adding to more detail to what I told you last week.

(b)(5) DPP [redacted]

From: Giffen, Tom
Sent: Thursday, January 09, 2014 8:54 AM
To: Little, Douglas
Subject: FW: Heads up on a New FOAI Assignment (EPA-HQ-2014-002006) - FOIA re Text Messages

Here is the chain covering the FOIA we discussed.

Thanks,

Tom Giffen
Chief, Information Technology Section
EPA Region 1 OARM
5 Post Office Square, Suite 100
MailCode OARM0201
Boston, MA 02109-3912
617-918-1444

From: Lee, Warren
Sent: Thursday, January 09, 2014 8:23 AM
To: Diehl, Chris
Cc: Giffen, Tom; Boudrot, Steve
Subject: RE: Heads up on a New FOAI Assignment (EPA-HQ-2014-002006) - FOIA re Text Messages

(b) (5) DPP, (b) (5) ACP [redacted]

From: Diehl, Chris
Sent: Thursday, January 09, 2014 7:26 AM
To: Lee, Warren
Cc: Giffen, Tom; Boudrot, Steve
Subject: Fw: Heads up on a New FOAI Assignment (EPA-HQ-2014-002006) - FOIA re Text Messages
Importance: High

(b)(5) DPP [redacted]

From: Grantham, Nancy
Sent: Thursday, January 09, 2014 6:18:53 AM
To: Diehl, Chris
Subject: Fw: Heads up on a New FOAI Assignment (EPA-HQ-2014-002006) - FOIA re Text Messages

(b)(5) DPP [redacted]
Thx

From: Schena, Cristeen
Sent: Wednesday, January 08, 2014 1:38:08 PM
To: Grantham, Nancy
Subject: FW: Heads up on a New FOAI Assignment (EPA-HQ-2014-002006) - FOIA re Text Messages

(b)(5) DPP [redacted]

[redacted]

Cris

From: Hamilton, Sabrina
Sent: Wednesday, January 08, 2014 1:31 PM
To: Lewis, Monica; Meekins, Tanya; Russell, Sherry; Painter, Michele; Newton, Jonathan; Bruce, Barbara
Cc: Faulkner, Martha; Hammond, Gloria; Weinstock, Larry; Schena, Cristeen
Subject: FW: Heads up on a New FOAI Assignment (EPA-HQ-2014-002006)

Monica,

Please assign a task for this FOIA case to Region 1 for coordination with OAR. Larry Weinstock is the point of contact and he and Jonathan Newton has provided feedback concerning this case in the emails below.

Tanya, Sherry, Michele, Jonathan and Barbara,

Please check FOIAonline for a "task" that was assigned to your office for coordination with OAR-IO. Please provide responsive document by January 16, 2014. If you have any questions, please contact Larry Weinstock. Thanks

Sabrina

Sabrina Hamilton
Air and Radiation Liaison Specialist
and FOIA Coordinator
Office of Air and Radiation - Correspondence Unit
U.S. Environmental Protection Agency (EPA)
1200 Pennsylvania Avenue, N.W. (6101-A)
Washington, D.C. 20460
Tel: (202) 564-1083
Fax: (202) 501-0600

From: Weinstock, Larry
Sent: Thursday, January 02, 2014 3:40 PM
To: McCabe, Janet; Goffman, Joseph; Russell, Sherry; Huang, Cindy; Meekins, Tanya; Painter, Michele
Cc: Noonan, Jenny; Stewart, Lori; Hamilton, Sabrina
Subject: Heads up on a New FOAI Assignment (EPA-HQ-2014-002006)

EPA has received the attached FOIA from Chris Horner. It is a follow-up from an earlier FOIA concerning Gina's text bill. (b) (5) DPP, (b) (5) ACP [redacted] As a result Mr. Horner is asking for all the text messages, on EPA provided cell phones from the following people:

1) **Joe Goffman,** Senior Counsel OAR

2) **Janet McCabe**

3) **Margo Oge**, OTAQ (retired late 2012)

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8) Mlke Flynn, Director, Office of Radiation and Indoor Air, EPA HQ

9) Bob Perciasepe

10) Curt Spalding, Regional Administrator EPA Region

11) Nancy Grantham, Director, EPA Rl, Office of Public Affairs

12) Ira W. Leighton, former deputy RA, Region

(b)(5) DPP [redacted]

[redacted]

Thanks
Larry Weinstock
Program Innovaiton Coordinator
Office of Air and Radiation
202-564-9226

From: Weinstock, Larry
Sent: Monday, December 30, 2013 2:39 PM
To: Faulkner, Martha; Stewart, Lori
Cc: Hamilton, Sabrina
Subject: RE: New FOAI Assignment (EPA-HQ-2014-002006)

Martha,

(b)(5) DPP [redacted] I need to see the more detailed information in the attachment.

Thanks
Larry

From: Faulkner, Martha
Sent: Monday, December 30, 2013 2:32 PM
To: Stewart, Lori
Cc: Weinstock, Larry; Hamilton, Sabrina
Subject: New FOAI Assignment (EPA-HQ-2014-002006)

Good Afternoon Lori ,

Please advise which office should be assigned this control. Thanks

Martha

From: Newton, Jonathan
Sent: Friday, December 27, 2013 1:59 PM
To: Lewis, Monica; Hamilton, Sabrina
Cc: Gottesman, Larry
Subject: HQ-2014-0002006 - Reassignment to OAR

Hi Monica and Sabrina,

This is a request seeking text messages from twelve individuals: Joe Goffman (OAR); Janet McCabe (OAR); Margo Oge (OAR); Cindy Huang (OAR); Steve Page (OAR); Peter Tsirigotis (OAR); Mike Flynn (OAR); Curt Spalding (R1); Nancy Grantham (R1); Bob Perciasepe (AO); Scott Fulton (Formerly OGC); and Ira W. Leighton (Formerly R1).

(b)(5) DPP [redacted]

Thanks

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: Minoli, Kevin
To: McDermott, Marna
Subject: RE: New FOAI Assignment (EPA-HQ-2014-002006)
Date: Thursday, January 02, 2014 4:57:00 PM

I'll be in all day tomorrow with only lunch on my calendar if you want to chat about this. 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: McDermott, Marna
Sent: Tuesday, December 31, 2013 5:17 PM
To: Minoli, Kevin; Miller, Kevin
Subject: Fw: New FOAI Assignment (EPA-HQ-2014-002006)

(b) (5) DPP, (b) (5) ACP

[redacted]

Marna McDermott
202 564 2890

From: Weinstock, Larry
Sent: Tuesday, December 31, 2013 2:54:56 PM
To: Anderson, Cindy; Newton, Jonathan
Cc: No, Fredrick; Miller, Kevin; McDermott, Marna; Minoli, Kevin
Subject: FW: New FOAI Assignment (EPA-HQ-2014-002006)

This is Chris Horner's follow-up from the Gina text bill. He is asking for all the text messages from:

1) Joe Goffman, Senior Counsel OAR

2) Janet McCabe

3) Margo Oge, OTAQ (retired late 2012)

4) Cindy Huang, Staff Assistant To the Assistant Administrator

5) **Scott Fulton, former EPA General Counsel**

6) Steve Page, Director, OAQPS, Research Triangle Park (RTP)

7) Peter Tsirigotis, Director, Sector Policies and Programs Division, OAR:OAQPS, RTP

8) Mlke Flynn, Director, Office of Radiation and Indoor Air, EPA HQ

9) Bob Perciasepe

10) Curt Spalding, Regional Administrator EPA Region

11) Nancy Grantham, Director, EPA Rl, Office of Public Affairs

12) Ira W. Leighton, former deputy RA, Region

(b) (5) DPP [redacted]

[redacted]

Thanks
Larry Weinstock
Program Innovaiton Coordinator
Office of Air and Radiation
202-564-9226

From: Minoli, Kevin
To: Garbow, Avi; Mallory, Brenda
Subject: RE: New FOIA lawsuit: Competitive Enterprise Institute v. United States Environmental Protection Agency 1:13cv779 D. DC
Date: Wednesday, May 29, 2013 5:07:00 PM

(b)(5) DPP, (b)(5) AWP, (b)(5) ACP [redacted] Kevin

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

-----Original Message-----
From: Garbow, Avi
Sent: Wednesday, May 29, 2013 4:53 PM
To: Minoli, Kevin; Mallory, Brenda
Subject: Re: New FOIA lawsuit: Competitive Enterprise Institute v. United States Environmental Protection Agency 1:13cv779 D. DC

(b)(5) DPP, (b)(5) AWP, (b)(5) [redacted]

From: Minoli, Kevin
Sent: Wednesday, May 29, 2013 4:46:32 PM
To: Mallory, Brenda; Garbow, Avi
Subject: FW: New FOIA lawsuit: Competitive Enterprise Institute v. United States Environmental Protection Agency 1:13cv779 D. DC

(b)(5) DPP, (b)(5) AWP, (b)(5) ACP [redacted] Kevin

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

-----Original Message-----
From: Miller, Kevin
Sent: Wednesday, May 29, 2013 4:17 PM
To: Minoli, Kevin
Subject: FW: New FOIA lawsuit: Competitive Enterprise Institute v. United States Environmental Protection Agency 1:13cv779 D. DC
Importance: High

Kevin,

Attached is a copy of the new CEI complaint. This one is a failure to respond suit for the following request:

copies of all text messages sent by Assistant Administrator for Air and Radiation Gina McCarthy on a mobile telephone provided for her use by the Agency, on the following eighteen days:

2009: July 9, 2009; July 14, 2009
2010: July 22, 2010; March 4, 2010; March 24, 2010
2011: March 1, 2011; March 13, 2011; March 24, 2011; April 13, 2011; May 13, 2011; June 30, 2011; September 8, 2011; September 15, 2011; October 12, 2011; October 25, 2011
2012: February 28, 2012; June 19, 2012; June 29, 2012.

(b)(5) AWP

Kevin

From: Minoli, Kevin
To: Johnson, Alisha
Subject: RE: Text response
Date: Friday, May 31, 2013 5:09:00 PM

I'm touching base with Avi and will be back with you shortly.

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

-----Original Message-----
From: Johnson, Alisha
Sent: Friday, May 31, 2013 4:44 PM
To: Ketcham-Colwill, Nancy; Minoli, Kevin; Reynolds, Thomas
Subject: RE: Text response

Thanks. Kevin. Below is the current draft. Please let me know what edits you have.

(b) (5) DPP, (b) (5) ACP [redacted]

-----Original Message-----
From: Ketcham-Colwill, Nancy
Sent: Friday, May 31, 2013 4:36 PM
To: Minoli, Kevin; Reynolds, Thomas
Cc: Johnson, Alisha
Subject: Re: Text response

Thanks, Kevin. Alisha is drafting something for review and we'll definitely loop you in.

From: Minoli, Kevin
Sent: Friday, May 31, 2013 4:24:06 PM
To: Ketcham-Colwill, Nancy; Reynolds, Thomas
Subject: RE: Text response

I'm definitely happy to help too. Kevin

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

-----Original Message-----
From: Ketcham-Colwill, Nancy
Sent: Friday, May 31, 2013 3:51 PM
To: Reynolds, Thomas; Mccarthy, Gina; Goffman, Joseph

Cc: Garbow, Avi; Millett, John; Ganesan, Arvin; Minoli, Kevin; Weinstock, Larry
Subject: Re: Text response

(b) (5) DPP, (b) (5) ACP [redacted]

From: Reynolds, Thomas
Sent: Friday, May 31, 2013 3:38:12 PM
To: Mccarthy, Gina; Ketcham-Colwill, Nancy; Goffman, Joseph
Cc: Garbow, Avi; Millett, John; Ganesan, Arvin
Subject: RE: Text response

(b) (5) DPP, (b) (5) ACP [redacted]

-----Original Message-----
From: Mccarthy, Gina
Sent: Friday, May 31, 2013 3:31 PM
To: Ketcham-Colwill, Nancy; Goffman, Joseph
Cc: Garbow, Avi; Reynolds, Thomas; Millett, John; Ganesan, Arvin
Subject: Text response

(b) (5) DPP, (b) (5) ACP [redacted]

[redacted]

From: Johnson, Alisha
To: Minoli, Kevin; Garbow, Avi
Subject: RE: Washington Times inquiry: EPA text message FOIA question
Date: Tuesday, April 30, 2013 9:24:20 AM

Great. I'm available to talk when you have a moment.
202-564-4373

From: Minoli, Kevin
Sent: Tuesday, April 30, 2013 8:03 AM
To: Johnson, Alisha; Garbow, Avi
Subject: Re: Washington Times inquiry: EPA text message FOIA question

Hi Alisha- I will give you a call when I get in this morning to talk through your questions. Kevin

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

From: Johnson, Alisha
Sent: Monday, April 29, 2013 6:43:38 PM
To: Garbow, Avi; Minoli, Kevin
Subject: FW: Washington Times inquiry: EPA text message FOIA question

Hey there,
See the request below. (b) (5) DPP, (b) (5) ACP [redacted] ?

Any insight on this helpful.
Thanks,
Alisha

From: Stephen Dinan [mailto:sdinan@washingtontimes.com]
Sent: Friday, April 26, 2013 1:13 PM
To: Press
Subject: Washington Times inquiry: EPA text message FOIA question

Hi EPA press folks,

I sent this to several press officers this morning but got a few bounce-backs so I figured I'd try the main address. 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: Minoli, Kevin
To: Johnson, Alisha; Garbow, Avi
Subject: RE: Washington Times: Feds hide behind potential text message loophole in sunshine law
Date: Tuesday, April 30, 2013 3:01:00 PM
Attachments: image001.png
image002.png

HI Alisha- As we talked about this morning, here is what I think we could use as a desk statement for the time being. Let me know if you think we need more.

(b) (5) DPP, (b) (5) ACP [redacted]

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: Johnson, Alisha
Sent: Tuesday, April 30, 2013 12:32 PM
To: Minoli, Kevin; Garbow, Avi
Subject: Washington Times: Feds hide behind potential text message loophole in sunshine law

Washington Times story has run. Any word on desk statement?

Feds hide behind potential text message loophole in sunshine law

By Stephen Dinan
The Washington Times • Monday, April 29, 2013
-

The researcher who exposed former EPA chief Lisa P. Jackson's private email account is now taking aim at her potential successor — and is expanding the inquiry into the world of mobile phone text messages, which are shaping up as the next frontier in open-records legal battles.

Christopher Horner, the researcher, has requested some phone text message records from Gina McCarthy, An Environmental Protection Agency assistant administrator whom President Obama has tapped for the top job. Mr. Horner wants to see the texts Ms. McCarthy was sending during the days she appeared beforeCongress over the past four years.

Even more broadly, he is testing the limits of federal open-records laws by going after texts, which some analysts said could be a new loophole in the federal Freedom of Information Act (FOIA).

“No text messages have apparently ever been turned over by EPA in response to FOIA and congressional oversight requests for ‘records’ or ‘electronic records.’ Yet they are undeniably agency records under various relevant statutes,” Mr. Horner told The Washington Times. “Has EPA been destroying these records or preserving them as required, but merely hiding them from the public and from Congress?”

The EPA didn’t return messages Friday or Monday asking about its policy on storing or searching text messages, nor did the agency answer questions about Ms. McCarthy in particular, but documents on the agency’s website seem to suggest that employees are supposed to preserve their text messages.

The Obama administration overall doesn’t appear to have done much work on text messages and open records.

The White House budget office didn’t return messages seeking comment Friday or Monday. The Washington Times also reached out to a handful of departments Monday to ask about their text message open-records policies, but didn’t get an answer from any of them.

Even congressional champions of open-records laws don’t appear to have focused on the intersection between texts and FOIA.

The National Archives and Records Administration, which is responsible for preserving federal records, said it hasn’t issued any guidance and said the only texts that would fall under open-records preservation rules are those that constitute a “record” under the Federal Records Act.

For messages that are deemed “non-transitory federal records,” which means they must be preserved beyond 180 days, “agencies should take reasonable steps to preserve the text, including either forwarding to an email system, or memorializing in some other fashion (just like voice mails),” Chris Isleib, a spokesman for the National Archives, said in an email.

When it gets FOIA requests, the National Archives takes reasonable steps to find any records that would be responsive, including those on electronic media, Mr. Isleib said.

Ken Bunting, executive director of the National Freedom of Information Coalition, said states also are grappling with questions of how text messages fit with their own sunshine laws.

“My feeling is, any communication that would be a public record if done on paper ought to be a public record if done electronically and whatever preservation policies that existed for paper records ought to be at least as thorough for electronic preservation,” he said. “Unfortunately, what we already know is that people usetechnology to hide stuff.”

Mr. Bunting's group is holding its annual conference in May, and he said one of the major focuses will be on what he called "digital sleight-of-hand" that officials are using to avoid scrutiny.

The EPA, in particular, has been the subject of complaints about its record-keeping.

Mr. Horner last year exposed Ms. Jackson's use of an email alias, "Richard Windsor," which she used for internal business. He questioned whether that account was being searched when reporters or the public asked to see electronic records.

Mr. Horner and several congressional committees looking into the EPA also discovered other agency officials using personal emails to conduct government business — a violation of the Freedom of Information Act.

The acting administrator earlier this month sent out an email telling all employees that they would have to go through retraining on open-records laws. The EPA's internal auditor also is looking into how well the agency is complying with the law.

The questions are emerging as Ms. McCarthy awaits a Senate vote on her nomination to become the agency's director.

At her confirmation hearing, she fielded numerous questions about EPA policies. She said at one point that she couldn't have used computer instant messages to circumvent open-records requests because she doesn't know how to use the EPA's IM program.

She was not asked about text messages.

Mr. Horner said he has been told she sent some particularly "salty" messages during times when she appeared before congressional committees. He filed a request last week for those records.

It is unclear whether those texts would fall under the law's definition of "non-transitory" records.

It could even be questionable what constitutes a text. Trying to head that off, Mr. Horner wrote a long footnote in his FOIA request detailing the kinds of things he believes should be covered: "SMS or MMS messages, all electronic messages between two or more mobile phones or fixed or portable devices over a phone network that are not sent from an email client. In the event the handheld device assigned to Ms. McCarthy for telephone/data use is an Apple device, this request also contemplates iMessages."

Read more: http://www.washingtontimes.com/news/2013/apr/29/do-text-messages-from-federal-officials-belong-in-/?page=2#ixzz2RxtG4U6s

Follow us: @washtimes on Twitter

Read more: http://www.washingtontimes.com/news/2013/apr/29/do-text-messages-from-federal-officials-belong-in-/#ixzz2Rxt1Y3rv
Follow us: @washtimes on Twitter

From: Nguyen, Quoc
To: OGC GLO ILPG
Subject: RE: reg review agenda items for tomorrow
Date: Tuesday, August 13, 2013 10:56:44 AM
Attachments: GLO reg review ILPG 8-13-13.docx (b) (5) DPP, (b) (5) ACP

With attachment in case you are not a mind reader. ☺

Quoc

From: Nguyen, Quoc
Sent: Tuesday, August 13, 2013 10:49 AM
To: OGC GLO ILPG
Subject: RE: reg review agenda items for tomorrow

Here's my draft. Please let me know if you have any additional items (or if I left anything out) before noon today.

Thanks!

Quoc

Quoc P. Nguyen
Office of General Counsel
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20010
202-564-6343

CONFIDENTIAL communication for internal deliberations only; may contain deliberative, attorney-client, attorney work product, or otherwise privileged material; do not distribute outside EPA or DOJ.

From: Minoli, Kevin
To: Johnson, Alisha
Subject: Re: CEI Sues EPA for Gina McCarthy"s Text and Training Records
Date: Monday, July 15, 2013 1:26:49 PM

Let me get a copy of the complaint and let you know.

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

From: Johnson, Alisha
Sent: Monday, July 15, 2013 1:05:26 PM
To: Minoli, Kevin
Subject: Fw: CEI Sues EPA for Gina McCarthy's Text and Training Records

Fyi - (b) (5) DPP, (b) (5) ACP
[redacted] ?

From: Emily Yehle <eyehle@eenews.net>
Sent: Monday, July 15, 2013 1:02:31 PM
To: Johnson, Alisha
Subject: FW: CEI Sues EPA for Gina McCarthy's Text and Training Records

Alisha,

Any comment on this lawsuit? Deadline is 3.

Thanks!

Emily Yehle
Reporter
eyehle@eenews.net
202-446-0437 (p)
202-737-5299 (f)

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From: Brian McNicoll <bmac@cei.org>
Date: July 15, 2013, 12:01:38 PM EDT
To: <jplautz@eenews.net>
Subject: CEI Sues EPA for Gina McCarthy's Text and Training Records

Contact:
Brian McNicoll, 202-331-2765

CEI Sues EPA for Gina McCarthy's Text and Training Records

Nearing Senate Confirmation Vote, Nominee Remains Shielded by Agency Stonewalling

WASHINGTON, D.C., July 15, 2013 – The Competitive Enterprise Institute filed suit today in federal court to force the Environmental Protection Agency to turn over phone bills for the EPA-issued PDA issued to Gina McCarthy, a top EPA official and President Obama's nominee to serve as the next administrator.

CEI's suit also seeks records EPA has failed to turn over that would reflect whether McCarthy received and/or acknowledged the required training in EPA electronic record use and preservation 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." A similar, contemporaneous request produced "Scholar of Ethics" awards to the false identity assumed by the woman McCarthy seeks to replace, former administrator Lisa Jackson. EPA has failed to provide any evidence of McCarthy receiving the required training.

A Senate vote on McCarthy's nomination could come as soon as this week despite several unanswered questions involving her electronic correspondence and recordkeeping practices, including why EPA is withholding thousands of her emails about the "war on coal" in a lawsuit and unlawfully refusing to produce even factual information such as the dates, parties and subject matter.

"Obama's EPA is waving red flags all over the place," said **Christopher Horner**, Senior Fellow at CEI and author of "The Liberal War on Transparency," research for which turned up the 'Richard Windsor' fake name email scandal and other evidence of EPA avoiding disclosure requirements. "Ultimately, we will learn if EPA's problems with non-official email accounts, and accounts not identifying the account holder, extend to their use of private accounts for texting or even destroying this alternative to email, as it seems. Resolving the questions in today's suit, and about her use of a personal account, should be necessary conditions to moving forward on her nomination. This also would do much to address the growing impression Gina McCarthy has something to hide and that EPA is going to great lengths to help her hide it."

CEI submitted the IT-training request under the Freedom of Information Act in April, as well as one for text messages from McCarthy's EPA-issued phone on 18 specific dates. The latter request came after CEI was reliably informed McCarthy was warned to stop texting after concerns about the propriety of

messages, specifically those sent on days she appeared before Congress.

EPA has claimed it has no such text messages. CEI then sought McCarthy's relevant phone bills, which should establish whether she used the text feature as an alternative to email on her EPA-assigned device, including on those dates. In a separate request, presently on administrative appeal, CEI also seeks work-related text messages from McCarthy's non-EPA-issued phone, which under EPA rules are public records subject to FOIA and which McCarthy is in fact responsible for turning over to EPA without being asked.

EPA has indicated satisfying CEI's request for phone bills would take two hours or less. But to further expedite matters CEI narrowed the request to seek only those portions that reflect text activity. If those records were created, on any device, EPA must explain what happened between those records being created and their "no records" response. The interim step between creation and claiming "no records," is that they have been destroyed – a violation of federal law.

EPA has apparently yet to include text messages in response to any request for records whether from Congress or through the FOIA process, although the law plainly says these messages are public records. CEI's investigation of EPA's transparency practices has revealed a pattern of resistance to disclosure of its activities. Already this has led to an Inspector General inquiry into EPA's instant messaging practices, presumably including whether EPA preserves IMs as required.

"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.]"

Horner noted a pattern of efforts on behalf of EPA to protect McCarthy until she can be approved by the Senate. Already, in response to a court order for EPA to turn over about 12,000 emails related to "climate" and "coal," the dog not barking in those relatively few emails EPA did turn over was McCarthy, even though she is the lieutenant in charge of such matters. Thousands of those emails that were produced were heavily, sometimes comically redacted despite a directive from President Obama that FOIA requests should be treated with "a presumption of disclosure." These records did nonetheless reveal McCarthy was among the circle with whom Jackson used the false identity "Richard Windsor," rather than her own name, on email communications with top staffers and key outside allies. Jackson resigned after the court order to produce them, apparently to avoid answering questions about her decision to conduct certain official correspondence as such.

Other EPA executives, including Jim Martin, director of EPA's Region 8 in Denver, have resigned after having been found during litigation initiated by CEI to have regularly used a private email account to conduct official business. CEI

similarly awaits emails from the Region 9 administrator's Comcast email account which he used for EPA-related correspondence. EPA's general counsel also resigned the day Horner released copies of screen shots establishing that the Windsor account was installed on Jackson's EPA computers.

"This particular case is one step on the path to determining the extent to which EPA is not meeting its obligations to keep the public informed," Horner said. "EPA should have moved matters along by now, particularly with Ms. McCarthy subject to scrutiny for a promotion."

► **Read the filed complaint here.**

CEI is a non-profit, non-partisan public policy group dedicated to the principles of free enterprise and limited government. For more information about CEI, please visit our website, cei.org, and blogs, Globalwarming.org and OpenMarket.org. Follow CEI on Twitter! Twitter.com/ceidotorg.

This message was sent to jplautz@eenews.net from:

Competitive Enterprise Institute | 1899 L Street NW 12th Floor | Washington, DC 20036

Email Marketing by

Unsubscribe | Forward To a Friend

From: Minoli, Kevin
To: Anderson, Cindy; Kelly, Lynn; Miller, Kevin
Subject: Re: CEI v. EPA (13-1074) billing for Gina McCarthy text messages - email to Horner
Date: Monday, September 16, 2013 4:27:25 PM

I have a thought too. Will call in0 a couple minutes.

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, September 16, 2013 4:25:27 PM
To: Kelly, Lynn; Minoli, Kevin; Miller, Kevin
Subject: CEI v. EPA (13-1074) billing for Gina McCarthy text messages - email to Horner

Thanks Lynn.

(b)(5) DPP, (b)(5) AWP, (b)(5) ACP [redacted]

[redacted]

[redacted]

Cindy
564-2690

From: Kelly, Lynn
Sent: Monday, September 16, 2013 4:20 PM
To: Anderson, Cindy; Minoli, Kevin; Miller, Kevin
Subject: RE: CEI v. EPA (13-1074) billing for Gina McCarthy text messages

(b)(5) DPP, (b)(5) AWP, (b)(5) ACP [redacted]

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
Sent: Monday, September 16, 2013 3:58 PM
To: Minoli, Kevin; Miller, Kevin
Cc: Kelly, Lynn
Subject: CEI v. EPA (13-1074) billing for Gina McCarthy text messages
Importance: High

(b)(5) DPP, (b)(5) AWP, (b)(5) ACP [redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

(b)(5) DPP, (b)(5) AWP, (b)(5) ACP [redacted]

(b)(5) DPP, (b)(5) AWP, (b)(5) ACP [redacted]

[redacted]

[redacted]

[redacted]

(b)(5) DPP, (b)(5) AWP, (b)(5) ACP [redacted]

Thanks!

Cindy Anderson
EPA/OGC
(202) 564-2690

From: Minoli, Kevin
To: Anderson, Cindy; Miller, Kevin; McDermott, Marna
Subject: Re: CEI v. EPA (13-1074) invoices for text message billing for Gina McCarthy"s blackberry
Date: Monday, September 30, 2013 8:09:20 AM

(b)(5) DPP, (b)(5) AWP, (b)(5) I am going to be swamped with Congressional work today, so please just make sure and cc Marna and Kristi on things (we also have budget deadlines today, so ccing both of them is best). Thanks, Kevin

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

From: Anderson, Cindy
Sent: Sunday, September 29, 2013 8:48:28 PM
To: Miller, Kevin; Minoli, Kevin; McDermott, Marna
Subject: CEI v. EPA (13-1074) invoices for text message billing for Gina McCarthy's blackberry

All -

(b)(5) DPP, (b)(5) AWP, (b)(5) ACP [redacted]

Cindy Anderson
EPA/OGC
(202) 564-2690

From: Bennett, Karen
Sent: Thursday, September 26, 2013 7:01 PM
To: Anderson, Cindy
Subject: RE: CEI v. EPA (13-1074) invoices for text message billing for Gina McCarthy's blackberry

(b)(5) AWP, (b)(5) ACP [redacted]. I will be in all day tomorrow (and all of next week) if you have any questions.
Best, Karen

From: Anderson, Cindy
Sent: Tuesday, September 24, 2013 4:22 PM
To: Bennett, Karen
Subject: CEI v. EPA (13-1074) invoices for text message billing for Gina McCarthy's blackberry

Karen –

Thanks so much for pitching in to help with this project. (b)(5) DPP, (b)(5) AWP, (b)(5) ACP [redacted]

Please call or come by if you have any questions.

And, again, many thanks!

Cindy
564-2690

From: Anderson, Cindy
Sent: Thursday, September 19, 2013 4:29 PM
To: McDermott, Marna
Cc: Miller, Kevin
Subject: Friday meeting w/Kevin Miller: EPA Invoices for billing for Gina McCarthy's mobile device

Marna –

Kevin asked me to send the set of documents that are attached:

(b) (5) DPP, (b) (5) ACP [redacted]

Also below is some background information from EPA's contractor who is responsible for mobile device billing; she is in RTP and under OTOP.

Cindy
564-2690

From: DAVIS, TANIKA
Sent: Thursday, September 19, 2013 3:51 PM
To: Clark, Dee; Reilly, Tom
Subject: EPA Invoices

Here is a breakdown of what EPA receives monthly from the vendors:

AT&T

1. Remittance sheet sent to EPA Finance by AT&T Account Rep

2. Access to monthly data via the online portal

a. ECS downloads the raw billing data that is used for workload and the PDF version of the invoice

Verizon

1. Remittance sheet sent to EPA Finance by Verizon Account Rep

2. Access to monthly data via online portal

a. ECS downloads the raw billing data zip file that is used for workload and the PDF version of the invoice

T-Mobile

1. Paper invoice sent to EPA Finance

2. Access to monthly data via online portal

a. ECS downloads the raw billing data only, no PDF version of the invoice available

Sprint

1. Paper invoice sent to EPA Finance

2. Access to monthly data via online portal

a. ECS downloads zip file which includes PDF version of the invoice

3. Sprint Account rep send UAD raw data billing file to Tanika Davis monthly (used for workload)

Let me know if you have questions.

Tanika Davis
ECS Team - EPA ITS - ACT II Contractor
Sr. Telecommunications Billing Analyst
Information Management Group/Mobile Devices Business Office
Tel: (919) 541-1823
Fax: (919) 685-3118
Email: davis.tanika@epa.gov<mailto:davis.tanika@epa.gov>
~~~~~~
PLEASE NOTE If you require Mobile Device related assistance, please use the following contacts:
EZTech Locations - EPA Call Center 866-411-4372 (option 3) or EZTech@epa.gov<mailto:EZTech@epa.gov>
All Other Locations - EPA Call Center at 866-411-4EPA or
EPACALLCENTER@epa.gov<mailto:EPACALLCENTER@epa.gov>

Act mindfully. Accept entirely. Move strongly. Think softly. Speak beautifully. Live simply. Love completely.
~~~~~~

From: Garbow, Avi
To: Minoli, Kevin
Subject: Re: New FOIA lawsuit: Competitive Enterprise Institute v. United States Environmental Protection Agency 1:13cv779 D. DC
Date: Wednesday, May 29, 2013 6:21:44 PM

Can you call me on bb cell (b) (6) [redacted]

From: Minoli, Kevin
Sent: Wednesday, May 29, 2013 5:07:09 PM
To: Garbow, Avi; Mallory, Brenda
Subject: RE: New FOIA lawsuit: Competitive Enterprise Institute v. United States Environmental Protection Agency 1:13cv779 D. DC

(b)(5) DPP, (b)(5) AWP, (b)(5) ACP [redacted] Kevin

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

-----Original Message-----
From: Garbow, Avi
Sent: Wednesday, May 29, 2013 4:53 PM
To: Minoli, Kevin; Mallory, Brenda
Subject: Re: New FOIA lawsuit: Competitive Enterprise Institute v. United States Environmental Protection Agency 1:13cv779 D. DC

(b)(5) DPP, (b)(5) AWP, (b)(5) [redacted]

From: Minoli, Kevin
Sent: Wednesday, May 29, 2013 4:46:32 PM
To: Mallory, Brenda; Garbow, Avi
Subject: FW: New FOIA lawsuit: Competitive Enterprise Institute v. United States Environmental Protection Agency 1:13cv779 D. DC

(b)(5) DPP, (b)(5) AWP, (b)(5) ACP [redacted] t. Kevin

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

-----Original Message-----
From: Miller, Kevin
Sent: Wednesday, May 29, 2013 4:17 PM

To: Minoli, Kevin
Subject: FW: New FOIA lawsuit: Competitive Enterprise Institute v. United States Environmental Protection Agency 1:13cv779 D. DC
Importance: High

Kevin,

Attached is a copy of the new CEI complaint. This one is a failure to respond suit for the following request:

copies of all text messages sent by Assistant Administrator for Air and Radiation Gina McCarthy on a mobile telephone provided for her use by the Agency, on the following eighteen days:

2009: July 9, 2009; July 14, 2009
2010: July 22, 2010; March 4, 2010; March 24, 2010
2011: March 1, 2011; March 13, 2011; March 24, 2011; April 13, 2011; May 13, 2011; June 30, 2011; September 8, 2011; September 15, 2011; October 12, 2011; October 25, 2011
2012: February 28, 2012; June 19, 2012; June 29, 2012.

(b)(5) AWP

Kevin

From: Minoli, Kevin
To: Johnson, Alisha; Ketcham-Colwill, Nancy; Reynolds, Thomas; Garbow, Avi; Millett, John
Subject: Re: Text response
Date: Friday, May 31, 2013 11:46:02 PM

That worlks for me.

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

From: Johnson, Alisha
Sent: Friday, May 31, 2013 6:30:09 PM
To: Minoli, Kevin; Ketcham-Colwill, Nancy; Reynolds, Thomas; Garbow, Avi; Millett, John
Subject: Re: Text response

How about:

(b) (5) DPP, (b) (5) ACP [redacted]

From: Minoli, Kevin
Sent: Friday, May 31, 2013 5:24:58 PM
To: Ketcham-Colwill, Nancy; Johnson, Alisha; Reynolds, Thomas; Garbow, Avi
Subject: RE: Text response

(b) (5) DPP, (b) (5) ACP [redacted]

[redacted]

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

-----Original Message-----
From: Ketcham-Colwill, Nancy
Sent: Friday, May 31, 2013 5:20 PM
To: Johnson, Alisha; Minoli, Kevin; Reynolds, Thomas
Subject: Re: Text response

(b) (5) DPP, (b) (5) ACP [redacted]?

From: Johnson, Alisha
Sent: Friday, May 31, 2013 4:43:53 PM
To: Ketcham-Colwill, Nancy; Minoli, Kevin; Reynolds, Thomas
Subject: RE: Text response

Thanks. Kevin. Below is the current draft. Please let me know what edits you have.

(b)(5) DPP, (b)(5) ACP [redacted]

-----Original Message-----
From: Ketcham-Colwill, Nancy
Sent: Friday, May 31, 2013 4:36 PM
To: Minoli, Kevin; Reynolds, Thomas
Cc: Johnson, Alisha
Subject: Re: Text response

Thanks, Kevin. Alisha is drafting something for review and we'll definitely loop you in.

From: Minoli, Kevin
Sent: Friday, May 31, 2013 4:24:06 PM
To: Ketcham-Colwill, Nancy; Reynolds, Thomas
Subject: RE: Text response

I'm definitely happy to help too. Kevin

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

-----Original Message-----
From: Ketcham-Colwill, Nancy
Sent: Friday, May 31, 2013 3:51 PM
To: Reynolds, Thomas; Mccarthy, Gina; Goffman, Joseph
Cc: Garbow, Avi; Millett, John; Ganesan, Arvin; Minoli, Kevin; Weinstock, Larry
Subject: Re: Text response

(b) (5) DPP, (b) (5) ACP [redacted]

From: Reynolds, Thomas
Sent: Friday, May 31, 2013 3:38:12 PM
To: Mccarthy, Gina; Ketcham-Colwill, Nancy; Goffman, Joseph
Cc: Garbow, Avi; Millett, John; Ganesan, Arvin

Subject: RE: Text response

(b) (5) DPP, (b) (5) ACP [redacted]

-----Original Message-----
From: Mccarthy, Gina
Sent: Friday, May 31, 2013 3:31 PM
To: Ketcham-Colwill, Nancy; Goffman, Joseph
Cc: Garbow, Avi; Reynolds, Thomas; Millett, John; Ganesan, Arvin
Subject: Text response

(b) (5) DPP, (b) (5) ACP [redacted]

[redacted]

From: Ketcham-Colwill, Nancy
To: Minoli, Kevin; Johnson, Alisha; Reynolds, Thomas; Garbow, Avi
Cc: Millett, John
Subject: Re: Text response
Date: Friday, May 31, 2013 5:49:40 PM

(b) (5) DPP, (b) (5) ACP [redacted]

From: Minoli, Kevin
Sent: Friday, May 31, 2013 5:24:58 PM
To: Ketcham-Colwill, Nancy; Johnson, Alisha; Reynolds, Thomas; Garbow, Avi
Subject: RE: Text response

(b) (5) DPP, (b) (5) ACP [redacted]

[redacted]

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

-----Original Message-----
From: Ketcham-Colwill, Nancy
Sent: Friday, May 31, 2013 5:20 PM
To: Johnson, Alisha; Minoli, Kevin; Reynolds, Thomas
Subject: Re: Text response

(b) (5) DPP, (b) (5) ACP [redacted]?

From: Johnson, Alisha
Sent: Friday, May 31, 2013 4:43:53 PM
To: Ketcham-Colwill, Nancy; Minoli, Kevin; Reynolds, Thomas
Subject: RE: Text response

Thanks. Kevin. Below is the current draft. Please let me know what edits you have.

(b) (5) DPP, (b) (5) ACP [redacted]

-----Original Message-----
From: Ketcham-Colwill, Nancy
Sent: Friday, May 31, 2013 4:36 PM
To: Minoli, Kevin; Reynolds, Thomas
Cc: Johnson, Alisha
Subject: Re: Text response

Thanks, Kevin. Alisha is drafting something for review and we'll definitely loop you in.

From: Minoli, Kevin
Sent: Friday, May 31, 2013 4:24:06 PM
To: Ketcham-Colwill, Nancy; Reynolds, Thomas
Subject: RE: Text response

I'm definitely happy to help too. Kevin

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

-----Original Message-----
From: Ketcham-Colwill, Nancy
Sent: Friday, May 31, 2013 3:51 PM
To: Reynolds, Thomas; Mccarthy, Gina; Goffman, Joseph
Cc: Garbow, Avi; Millett, John; Ganesan, Arvin; Minoli, Kevin; Weinstock, Larry
Subject: Re: Text response

(b) (5) DPP, (b) (5) ACP [redacted]

From: Reynolds, Thomas
Sent: Friday, May 31, 2013 3:38:12 PM
To: Mccarthy, Gina; Ketcham-Colwill, Nancy; Goffman, Joseph
Cc: Garbow, Avi; Millett, John; Ganesan, Arvin
Subject: RE: Text response

(b) (5) DPP, (b) (5) ACP [redacted]

-----Original Message-----
From: Mccarthy, Gina
Sent: Friday, May 31, 2013 3:31 PM
To: Ketcham-Colwill, Nancy; Goffman, Joseph
Cc: Garbow, Avi; Reynolds, Thomas; Millett, John; Ganesan, Arvin
Subject: Text response

(b) (5) DPP, (b) (5) ACP [redacted]

[redacted]

From: Garbow, Avi
To: McDermott, Marna; Mallory, Brenda; Minoli, Kevin
Subject: Re: To do by MONDAY Senior Staff
Date: Sunday, July 21, 2013 6:59:07 PM

These are all great!

From: McDermott, Marna
Sent: Sunday, July 21, 2013 6:21:20 PM
To: Mallory, Brenda; Garbow, Avi; Minoli, Kevin
Subject: Re: To do by MONDAY Senior Staff

Don't know her, so hard to come up with funny - some ideas below might inspire something better.

Because we aren't reviewing 1100 qfrs twice?

Because we heard she doesn't know how to send IMs, doesn't have a secondary email address and never does official business over text message?

Because we prefer to explain the Clean Air Act only once every eight years?

Because "remanded" sounds more fun when she says it? (You have to say remanded in her accent, which would make that a challenging one to deliver.)

From: Mallory, Brenda
Sent: Saturday, July 20, 2013 5:30:35 PM
To: Garbow, Avi; Minoli, Kevin; McDermott, Marna
Subject: Fw: To do by MONDAY Senior Staff

As you know, funny is not my strong suit. Looking for a little help here:-) B

From: Giles-AA, Cynthia
Sent: Friday, July 19, 2013 6:32:24 PM
To: Blumenfeld, Jared; Brooks, Karl; Curry, Ron; Enck, Judith; Garvin, Shawn; Hedman, Susan; McGrath, Shaun; McLerran, Dennis; Meiburg, Stan; Spalding, Curt; Banister, Beverly; Cantor, Howard; Coleman, Sam; Early, William; Hague, Mark; Mathur, Bharat; Meiburg, Stan; Pavlou, George; Pirzadeh, Michelle; Strauss, Alexis; DePass, Michelle; Froehlich, Maryann; Garcia, Lisa; Giles-AA, Cynthia; Hooks, Craig; Jones, Jim; Kadeli, Lek; Mallory, Brenda; Stanislaus, Mathy; Stoner, Nancy; Bloom, David; Breen, Barry; Chester, Steven; Corman, Bicky; Feldt, Lisa; Garbow, Avi; Gelb, Nanci; Kavlock, Robert; McCabe, Janet; Minoli, Kevin; Shapiro, Mike; Shaw, Betsy; Stahl, Michael; Starfield, Lawrence; Trovato, Ramona; Wise, Louise; Wynn, Renee; Elkins, Arthur
Subject: To do by MONDAY Senior Staff

A group of us got together this afternoon to talk about how we might mark the momentous occasion of Gina's starting as Administrator. So naturally we agreed to commit all of you to something. Not complicated. Please don't share this with Gina – idea is to surprise her.

Each NPM AA (or deputy if the AA is not present) and each Region will answer the question "Why is (insert office name) glad to have Gina as Administrator?" This is required to be SHORT. Just one thing. Seriously. And hopefully most of them humorous. Think of them as your entry in the top ten list. SHORT. One sentence. Including deputies on this list in event AA or RA is out. Please figure out who will speak for that AAship or Region in advance of Monday so we can keep this moving quickly, and not have any office do more than one.

The plan is to start this after Gina gives whatever opening remarks she wants to give. As she cues to Bruce to do SCOUT, our plan is to jump in and announce that we have a top 22 list. (See how many? That's why they are SHORT.) We will go around in the room first (that's 12 offices, including IG), then have the regions go around. In HQ, we will proceed around the table from whomever goes first. For Regions, the plan is to start with Region 6, and go up – i.e., 7, then 8 etc, so that we end with Region 5. There's a reason for that, which you will find out. We will do regional/program reports after this is completed. So do your sentence only for this part.

Since the list is 22 long, it is important that we move quickly, one after the other. So just shout yours out when the prior person is done.

Did I mention SHORT?

See you on Monday!

Cynthia

From: Minoli, Kevin
To: Anderson, Cindy
Subject: Re: release to CEI Friday, Dec. 6 of text message billing detail, including texts to/from Oye & Goffman
Date: Wednesday, December 04, 2013 3:28:51 PM

Yes, I will have looked at it before the call.

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

From: Anderson, Cindy
Sent: Wednesday, December 04, 2013 3:25:43 PM
To: Minoli, Kevin
Subject: RE: release to CEI Friday, Dec. 6 of text message billing detail, including texts to/from Oye & Goffman

OK, Kevin Miller's not in today.

(b)(5) DPP, (b)(5) ACP
[redacted]

Thanks -

Cindy
564-2690

From: Minoli, Kevin
Sent: Wednesday, December 04, 2013 3:25 PM
To: Anderson, Cindy
Subject: Re: release to CEI Friday, Dec. 6 of text message billing detail, including texts to/from Oye & Goffman

I am at home, so will call you if that is ok.

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

From: Anderson, Cindy
Sent: Wednesday, December 04, 2013 3:23:53 PM
To: Minoli, Kevin

Subject: RE: release to CEI Friday, Dec. 6 of text message billing detail, including texts to/from Oye & Goffman

Shall I come to your office at 4pm?

Cindy
564-2690

From: Minoli, Kevin
Sent: Wednesday, December 04, 2013 3:23 PM
To: Anderson, Cindy
Cc: Miller, Kevin
Subject: Re: release to CEI Friday, Dec. 6 of text message billing detail, including texts to/from Oye & Goffman

Hi Cindy- We got out a little earlier than I expected. Could we chat at 4 instead? Kevin

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

From: Anderson, Cindy
Sent: Wednesday, December 04, 2013 2:19:21 PM
To: Minoli, Kevin
Cc: Miller, Kevin
Subject: release to CEI Friday, Dec. 6 of text message billing detail, including texts to/from Oye & Goffman

Kevin- -

I look forward to discussing strategy with you at 5pm today.

(b)(5) DPP, (b)(5) ACP, (b)(5) AWP [redacted]

(b)(5) DPP, (b)(5) ACP,
(b)(5) AWP

Cindy Anderson
EPA/OGC
(202) 564-2690

From: Garbow, Avi
To: Minoli, Kevin
Cc: McDermott, Marna; Anderson, Cindy
Subject: Re: release to CEI Friday, Dec. 6, of text message billing detail
Date: Wednesday, December 04, 2013 10:00:39 PM

Thx. (b) (5) DPP, (b) (5) ACP [redacted]?
Avi

From: Minoli, Kevin
Sent: Wednesday, December 04, 2013 4:39:44 PM
To: Garbow, Avi
Cc: McDermott, Marna; Anderson, Cindy
Subject: Fw: release to CEI Friday, Dec. 6, of text message billing detail

Hi Avi- I wanted to forward this note to you as well. (b) (5) DPP, (b) (5) ACP [redacted]. Kevin

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

From: Anderson, Cindy
Sent: Wednesday, December 04, 2013 4:37:19 PM
To: Kika, Stacy; Johnson, Alisha; Reynolds, Thomas
Cc: Minoli, Kevin
Subject: release to CEI Friday, Dec. 6, of text message billing detail

Tom, et al.

(b) (5) DPP, (b) (5) ACP [redacted]

[redacted]

[redacted]

(b) (5) DPP, (b) (5) ACP [redacted]

Cindy Anderson
EPA/OGC
(202) 564-2690

From: Minoli, Kevin
To: Garbow, Avi
Cc: McDermott, Marna; Anderson, Cindy
Subject: Re: release to CEI Friday, Dec. 6, of text message billing detail
Date: Wednesday, December 04, 2013 10:14:51 PM

(b)(5) DPP, (b)(5) ACP, (b)(5) AWP [redacted]

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

From: Garbow, Avi
Sent: Wednesday, December 04, 2013 10:00:37 PM
To: Minoli, Kevin
Cc: McDermott, Marna; Anderson, Cindy
Subject: Re: release to CEI Friday, Dec. 6, of text message billing detail

Thx. (b)(5) DPP, (b)(5) ACP, (b)(5) AWP [redacted]
Avi

From: Minoli, Kevin
Sent: Wednesday, December 04, 2013 4:39:44 PM
To: Garbow, Avi
Cc: McDermott, Marna; Anderson, Cindy
Subject: Fw: release to CEI Friday, Dec. 6, of text message billing detail

Hi Avi- I wanted to forward this note to you as well. (b) (5) DPP, (b) (5) ACP [redacted]. Kevin

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

From: Anderson, Cindy
Sent: Wednesday, December 04, 2013 4:37:19 PM
To: Kika, Stacy; Johnson, Alisha; Reynolds, Thomas
Cc: Minoli, Kevin
Subject: release to CEI Friday, Dec. 6, of text message billing detail

Tom, et al.

(b) (5) DPP, (b) (5) ACP [redacted]

[redacted]

[redacted]

[redacted]

Cindy Anderson
EPA/OGC
(202) 564-2690

From: Anderson, Cindy
To: Minoli, Kevin
Subject: new FOIA lawsuit filed today
Date: Wednesday, April 09, 2014 4:16:23 PM
Attachments: Courtlink_Docket_US_DIS_DCD_1.14cv582_04.09.2014.htm
Courtlink_Document_US_DIS_DCD_1.14cv582_04.09.2014_.pdf

This just came across the wire this afternoon after we talked.

(b) (5) DPP, (b) (5) ACP [redacted]

Cindy Anderson
(202) 564-2690

From: Kelly, Lynn
Sent: Wednesday, April 09, 2014 12:11 PM
To: Anderson, Cindy
Cc: Weinstock, Larry; Miller, Kevin
Subject: FW: Competitive Enterprise Institute v. United States Environmental Protection Agency, US DIS DCD 1:14cv582

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

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: 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:	Anderson, Cindy
To:	Kika, Stacy; Johnson, Alisha; Reynolds, Thomas
Cc:	Minoli, Kevin
Subject:	release to CEI Friday, Dec. 6, of text message billing detail
Date:	Wednesday, December 04, 2013 4:37:23 PM
Attachments:	12.3.13 names REDACTED_Redacted -sample page 17.pdf (b) (5) DPP, (b) (5) ACP draft CEI Release (12.6.13) cover ltr 12.4cha.docx (b) (5) DPP, (b) (5) ACP
Importance:	High

Tom, et al.

(b) (5) DPP, (b) (5) ACP [redacted]

[redacted]

[redacted]

[redacted]

Cindy Anderson
EPA/OGC
(202) 564-2690

From: Anderson, Cindy
To: Koehler, Alfred
Cc: Gottesman, Larry
Subject: ATI"s FOIA request about contract with Battelle.
Date: Wednesday, May 01, 2013 11:33:00 AM
Importance: High

Mr. Koehler,

(b) (5) DPP, (b) (5) ACP [redacted]

[redacted]

[redacted]

I appreciate your attention to this matter.

Cindy Anderson
EPA/OGC
(202) 564-2690

From: Anderson, Cindy
Sent: Wednesday, May 01, 2013 11:22 AM
To: johnson, karen
Cc: Gottesman, Larry; Jackson, Mildred; Hamilton, Sabrina
Subject: RE: Inside EPA: EPA Pressed On Conflict Policy After State Air Group's Contract Scrapped
Importance: High

(b) (5) DPP, (b) (5) ACP [redacted]

[redacted]

[redacted]

[redacted]

(b) (5) DPP, (b) (5) ACP [redacted]

By copy of this message, I am sending it again to OAR as well.

Thanks for your attention.

Cindy Anderson
EPA/OGC
(202) 564-2690

-

From: johnson, karen
Sent: Wednesday, May 01, 2013 11:12 AM
To: Anderson, Cindy
Cc: Gottesman, Larry; Jackson, Mildred
Subject: FW: Inside EPA: EPA Pressed On Conflict Policy After State Air Group's Contract Scrapped
Importance: High

FYI - (b) (5) DPP, (b) (5) ACP [redacted]

From: Jackson, Mildred
Sent: Tuesday, April 30, 2013 6:01 PM
To: johnson, karen
Cc: Koehler, Alfred; Floyd-Coleman, Cynthia
Subject: FW: Inside EPA: EPA Pressed On Conflict Policy After State Air Group's Contract Scrapped
Importance: High

(b) (5) DPP, (b) (5) ACP [redacted]

Respectfully,

Mildred A. Jackson
Administrative Freedom of Information Specialist

Policy, Training, and Oversight Division
Management Support Service Center
FOIA Team (3802R)
email: jackson.mildred@epa.gov
telephone: (202) 564-4359
fax: (202) 565-2553

From: Jackson, Mildred
Sent: Tuesday, April 30, 2013 5:21 PM
To: johnson, karen
Cc: Koehler, Alfred; Floyd-Coleman, Cynthia
Subject: RE: Inside EPA: EPA Pressed On Conflict Policy After State Air Group's Contract Scrapped
Importance: High

(b) (5) DPP, (b) (5) ACP [redacted]

Respectfully,

Mildred A. Jackson
Administrative Freedom of Information Specialist
Policy, Training, and Oversight Division
Management Support Service Center
FOIA Team (3802R)
email: jackson.mildred@epa.gov
telephone: (202) 564-4359
fax: (202) 565-2553

From: johnson, karen
Sent: Tuesday, April 30, 2013 1:32 PM
To: Koehler, Alfred
Cc: Jackson, Mildred
Subject: FW: Inside EPA: EPA Pressed On Conflict Policy After State Air Group's Contract Scrapped

Good afternoon

Can your provide Cindy with an update?

From: Gottesman, Larry
Sent: Tuesday, April 30, 2013 12:21 PM
To: johnson, karen
Cc: Anderson, Cindy
Subject: RE: Inside EPA: EPA Pressed On Conflict Policy After State Air Group's Contract Scrapped

Karen-

Can you provide Cindy an update.

Thanks

Larry F. Gottesman
National FOIA Officer
U.S. Environmental Protection Agency
Washington D.C. 20460

Office - 202 566 2162
Mobile - 202 689 4588

From: Anderson, Cindy
Sent: Tuesday, April 30, 2013 12:10 PM
To: Gottesman, Larry
Subject: FW: Inside EPA: EPA Pressed On Conflict Policy After State Air Group's Contract Scrapped
Importance: High

Larry –

(b) (5) DPP, (b) (5) ACP [redacted]

(b) (5) DPP, (b) (5) ACP [redacted]

[redacted]

[redacted]

Cindy
564-2690

From: Weinstock, Larry
Sent: Tuesday, April 30, 2013 11:56 AM
To: Anderson, Cindy; Knapp, Kristien; Perrin, Alan
Cc: Ketcham-Colwill, Nancy
Subject: RE: Inside EPA: EPA Pressed On Conflict Policy After State Air Group's Contract Scrapped

(b) (5) DPP, (b) (5) ACP [redacted]

Larry

From: Anderson, Cindy
Sent: Tuesday, April 30, 2013 11:06 AM
To: Weinstock, Larry; Knapp, Kristien; Perrin, Alan
Cc: Ketcham-Colwill, Nancy
Subject: FW: Inside EPA: EPA Pressed On Conflict Policy After State Air Group's Contract Scrapped
Importance: High

Larry et al. - -

(b) (5) DPP, (b) (5) ACP [redacted]

[redacted]?

There's a link within this article to the (19-page!) FOIA request.

Thanks all!

Cindy

564-2690

From: Grady, Mary
Sent: Monday, April 29, 2013 9:15 AM
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

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 This e-mail address is being protected from spambots. You need JavaScript enabled to view it)

From: Anderson, Cindy
To: Weinstock, Larry
Subject: CEI FOIA (13-009249) August 8, 2013
Date: Monday, February 10, 2014 3:01:00 PM

Larry -

(b) (5) DPP, (b) (5) ACP [redacted]

[redacted]

[redacted]

[redacted]

Let's aim to talk either later today or sometime tomorrow.
Thanks!

Cindy Anderson
(202) 564-2690

-----Original Message-----
From: Anderson, Cindy
Sent: Monday, February 10, 2014 9:54 AM
To: Weinstock, Larry
Cc: Miller, Kevin
Subject: FW: CEI FOIA (13-009249) August 8, 2013
Importance: High

Larry -

I am hoping to talk with Kevin Miller later this morning about your draft responses to Chris Horner on this FOIA.

I will let you know, after we talk, if there are any concerns.

Kevin -
(b) (5) DPP, (b) (5) ACP [redacted]

[redacted]?

Cindy Anderson
(202) 564-2690

-----Original Message-----

From: Weinstock, Larry
Sent: Friday, February 07, 2014 3:12 PM
To: Anderson, Cindy; Miller, Kevin; Newton, Jonathan
Cc: McDermott, Marna
Subject: RE: CEI FOIA (13-009249) August 8, 2013

Here is the proposed response to Chris Horner. Please let me know if this is OK to send. I would send the pdf files of the call and pdf the letter after signing and dating it. I am including the Xcel version of the bills as an FYI

Thanks
Larry

-----Original Message-----
From: Anderson, Cindy
Sent: Friday, February 07, 2014 2:06 PM
To: Weinstock, Larry; Miller, Kevin
Subject: RE: CEI FOIA (13-009249) August 8, 2013

Thanks Larry.

(b) (5) DPP, (b) (5) ACP [redacted]

[redacted]?

Cindy Anderson
EPA/OGC
(202) 564-2690

From: Weinstock, Larry
Sent: Friday, February 07, 2014 1:47 PM
To: Anderson, Cindy; Miller, Kevin
Subject: RE: CEI FOIA (13-009249) August 8, 2013

(b) (5) DPP, (b) (5) ACP [redacted]

Larry

-----Original Message-----
From: Anderson, Cindy
Sent: Friday, February 07, 2014 1:35 PM
To: Miller, Kevin
Cc: Weinstock, Larry
Subject: FW: CEI FOIA (13-009249) August 8, 2013
Importance: High

Kevin -

I talked w/Larry Weinstock/OAR this morning about this pending CEI FOIA request.

(b) (5) DPP, (b) (5) ACP [redacted]

(b) (5) DPP, (b) (5) ACP [redacted]

What do you think?

Cindy Anderson
EPA/OGC
(202) 564-2690

From: Weinstock, Larry
Sent: Thursday, February 06, 2014 12:37 PM
To: Anderson, Cindy
Subject: FW: CEI FOIA (13-009249) August 8, 2013

When we talk we need to talk about this as well.

Thanks
Larry

From: Anderson, Cindy
Sent: Friday, November 22, 2013 4:39 PM
To: Weinstock, Larry
Subject: RE: CEI FOIA (13-009249) August 8, 2013

Larry –

(b)(5) DPP, (b)(5) ACP, (b)(5) AWP [redacted]

Thanks so much – I'll be in office next week, but only Monday and part of Tues & Wed.

Cindy
564-2690

From: Weinstock, Larry
Sent: Thursday, November 21, 2013 10:29 AM
To: Anderson, Cindy
Subject: FW: CEI FOIA (13-009249) August 8, 2013

As you know OAR is supposed to be the lead for this can you send me the bills so I can send then to OA.

Thanks
Larry

From: Reilly, Tom

Sent: Thursday, November 21, 2013 10:26 AM
To: Weinstock, Larry
Cc: Hilton, Patricia
Subject: RE: CEI FOIA (13-009249) August 8, 2013

Larry,

(b)(5) AWP

Tom

From: Weinstock, Larry
Sent: Thursday, November 21, 2013 10:18 AM
To: Reilly, Tom
Cc: Hilton, Patricia
Subject: FW: CEI FOIA (13-009249) August 8, 2013

Tom,

(b)(5) AWP

Thanks,
Larry

From: Weinstock, Larry
Sent: Tuesday, October 29, 2013 10:45 AM
To: Reilly, Tom
Cc: Hilton, Patricia; Ketcham-Colwill, Nancy
Subject: FW: CEI FOIA (13-009249) August 8, 2013

Tom,

(b)(5) AWP

Many thanks,
Larry

From: Anderson, Cindy
Sent: Tuesday, October 29, 2013 10:40 AM
To: Weinstock, Larry; Newton, Jonathan
Cc: Ketcham-Colwill, Nancy
Subject: RE: CEI FOIA (13-009249) August 8, 2013

(b) (5) DPP, (b) (5) ACP

Cindy
564-2690

From: Weinstock, Larry
Sent: Tuesday, October 29, 2013 10:37 AM

To: Anderson, Cindy; Newton, Jonathan
Cc: Ketcham-Colwill, Nancy
Subject: RE: CEI FOIA (13-009249) August 8, 2013

(b) (5) DPP, (b) (5) ACP [redacted]

Thanks
Larry

From: Anderson, Cindy
Sent: Tuesday, October 29, 2013 10:34 AM
To: Newton, Jonathan
Cc: Weinstock, Larry
Subject: CEI FOIA (13-009249) August 8, 2013
Importance: High

Larry & Jonathan –

(b)(5) DPP, (b)(5) ACP, (b)(5) AWP [redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted].

Thanks!

Cindy Anderson
EPA/OGC
(202) 564-2690

From: Anderson, Cindy
To: Nebeker, Mark (USADC)
Subject: CEI request for actual phone bills (8.8.13)
Date: Wednesday, August 28, 2013 4:44:00 PM
Attachments: [Untitled].pdf

Mark –

(b)(5) DPP, (b)(5) ACP, (b)(5) AWP [redacted]

[redacted]

[redacted]

Cindy
564-2690

From: EZTech_Printer [mailto:EZTek@epa.gov]
Sent: Wednesday, August 28, 2013 4:34 PM
To: Anderson, Cindy
Subject: CEI request for actual phone bills (8.8.13)

From: Anderson, Cindy
To: Miller, Kevin
Subject: CEI v. EPA & FOIA request (8/813) from CEI for Gina McCarthy text message bills (and phone bills)
Importance: High

When: Thursday, September 19, 2013 9:00 AM-9:30 AM (GMT-05:00) Eastern Time (US & Canada).
Where: Kevin's office

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

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

Kevin –

Please see the 2 emails that I forwarded and/or copied you on yesterday at 3:07 pm and 4:04 pm.

(b) (5) DPP, (b) (5) ACP [redacted]

[redacted] s. (b)(5) DPP, (b)(5) ACP, [redacted]

Thanks -
Cindy
564-2690

From: Anderson, Cindy
To: Nebeker, Mark (USADC)
Subject: CEI v. EPA (13-1074) Gina McCarthy text messaging invoices
Date: Wednesday, December 11, 2013 10:51:00 AM
Attachments: [Untitled].pdf
12.5.13 final 25 pp_Redacted.pdf

Mark –

(b)(5) AWP [redacted]

Cindy
564-2690

From: Anderson, Cindy
Sent: Friday, December 06, 2013 5:12 PM
To: 'Chris Horner'
Subject: CEI v. EPA (13-1074)

Mr. Horner –

Attached are a letter, including an attached list of names, along with 25-pages of invoices for text messaging.

I will place a hard copy of these documents in the mail as well.

Cindy
564-2690

From: Anderson, Cindy
To: Nebeker, Mark (USADC)
Subject: CEI v. EPA (13-1074) billing for McCarthy text messaging
Date: Friday, December 13, 2013 12:02:00 PM
Attachments: ecf Mem Op 09.30.13.pdf
Importance: High

Mark –

(b)(5) [redacted]

(b)(5) AWP [redacted]

Thanks!

Cindy Anderson
EPA/OGC
(202) 564-2690

From: Anderson, Cindy
To: Reilly, Tom
Subject: CEI v. EPA (13-1074) billing for text messages
Attachments: draft REILLY Decl 12.12.13.docx (b) (5) DPP, (b) (5) ACP
Importance: High

When: Monday, December 16, 2013 10:30 AM-11:00 AM (GMT-05:00) Eastern Time (US & Canada).
Where: I will call you, Tom

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

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

Tom –

(b)(5) AWP, (b)(5) DPP [redacted]

Thanks!

Cindy
564-2690

From: Anderson, Cindy
To: Bennett, Karen
Subject: CEI v. EPA (13-1074) invoices for text message billing for Gina McCarthy"s blackberry
Date: Tuesday, September 24, 2013 4:25:00 PM
Attachments: 202-596-0247 - Message Detail - Jun 11-Aug 13.xlsx (b) (5) DPP, (b) (5) ACP

Karen –

Thanks so much for pitching in to help with this project.(b)(5) AWP, (b)(5) DPP, (b)(5) AC [redacted]

Please call or come by if you have any questions.

And, again, many thanks!

Cindy
564-2690

From: Anderson, Cindy
Sent: Thursday, September 19, 2013 4:29 PM
To: McDermott, Marna
Cc: Miller, Kevin
Subject: Friday meeting w/Kevin Miller: EPA Invoices for billing for Gina McCarthy's mobile device

Marna –

Kevin asked me to send the set of documents that are attached:

(b) (5) DPP, (b) (5) ACP [redacted]

Also below is some background information from EPA's contractor who is responsible for mobile device billing; she is in RTP and under OTOP.

Cindy
564-2690

From: DAVIS, TANIKA
Sent: Thursday, September 19, 2013 3:51 PM
To: Clark, Dee; Reilly, Tom
Subject: EPA Invoices

Here is a breakdown of what EPA receives monthly from the vendors:

AT&T

1. Remittance sheet sent to EPA Finance by AT&T Account Rep
2. Access to monthly data via the online portal
   a. ECS downloads the raw billing data that is used for workload and the PDF version of the invoice

Verizon

1. Remittance sheet sent to EPA Finance by Verizon Account Rep
2. Access to monthly data via online portal
   a. ECS downloads the raw billing data zip file that is used for workload and the PDF version of the invoice

T-Mobile

1. Paper invoice sent to EPA Finance
2. Access to monthly data via online portal
   a. ECS downloads the raw billing data only, no PDF version of the invoice available

Sprint

1. Paper invoice sent to EPA Finance
2. Access to monthly data via online portal
   a. ECS downloads zip file which includes PDF version of the invoice
3. Sprint Account rep send UAD raw data billing file to Tanika Davis monthly (used for workload)

Let me know if you have questions.

Tanika Davis
ECS Team - EPA ITS - ACT II Contractor
Sr. Telecommunications Billing Analyst
Information Management Group/Mobile Devices Business Office
Tel: (919) 541-1823
Fax: (919) 685-3118
Email: davis.tanika@epa.gov
~~~~~~

PLEASE NOTE If you require Mobile Device related assistance, please use the following contacts:
EZTech Locations - EPA Call Center 866-411-4372 (option 3) or EZTech@epa.gov
All Other Locations - EPA Call Center at 866-411-4EPA or EPACALLCENTER@epa.gov

Act mindfully. Accept entirely. Move strongly. Think softly. Speak beautifully. Live simply. Love completely.
~~~~~~

From:	Anderson, Cindy
To:	mark.nebeker@usdoj.gov
Subject:	CEI v. EPA (13-1074)
Date:	Monday, August 19, 2013 10:28:00 AM
Attachments:	MCCARTHY 2013 Information Security Awareness Training (2).pdf MCCARTHY 2010 NSI training.pdf MCCARTHY 2011 Cybersecurity Training.pdf MCCARTHY 2012 Ethics.pdf MCCARTHY 2013 Information Security Awareness Training.pdf OTOP Response to FOIA HQ-2013-005618.pdf FOIA Response Attachment HQ-2013-005618.pdf

---

Mark -

(b)(5) AWP [redacted]

Thanks!

Cindy Anderson
EPA/OGC
(202) 564-2690

From: Anderson, Cindy
To: Fritz, Matthew
Subject: FOIA request/litigation from Competitive Enterprise Institute for info re Gina McCarthy IT training
Date: Thursday, August 08, 2013 2:36:00 PM
Attachments: GinaMcCarthy09.JPG
FOIA Response Attachment HQ-2013-005618.pdf
MCCARTHY 2010 NSI training.pdf
MCCARTHY 2011 Cybersecurity Training.pdf
MCCARTHY 2012 Ethics.pdf
MCCARTHY 2013 Information Security Awareness Training.pdf
MCCARTHY 2013 Information Security Awareness Training (2).pdf
EPA-HQ-2013-005618 FOIA Response 8.8.13 FINAL v2.docx

Matt -

(b)(5) AWP [redacted]

[redacted]

[redacted]

[redacted]

DPP, (b) (5) ACP [redacted]

[redacted]

Please call me anytime with questions or if you'd like to discuss this FOIA request and lawsuit.
Thanks!
Cindy Anderson
EPA/OGC
(202) 564-2690

-----Original Message-----
From: Hilton, Patricia
Sent: Thursday, August 08, 2013 1:32 PM
To: Anderson, Cindy
Cc: Maher, Karen; Watkins, Harrell; Huang, Cindy; Weinstock, Larry
Subject: RE: McCarthy 2013 it tng

Hi Cindy,

Here is another version of the FOIA response to Mr. Horner which incorporates a response for all three areas mentioned in his original request. I've also incorporated the appeal language.

In addition, I've included all of the attachments that will need to be included. Please let me know if you have any questions. I will wait to hear from you before having Harrell Watkins sign off. Thanks, Pat

Patricia Hilton (Pat), Special Assistant Office of Technology Operations and Planning (OTOP) Office of Environmental Information (OEI) Office (202) 566-1636 Fax (202) 566-0319

From: Anderson, Cindy
To: Weinstock, Larry
Cc: Minoli, Kevin
Subject: FW: Activity in Case 1:13-cv-01074-RMC COMPETITIVE ENTERPRISE INSTITUTE v. UNITED STATES ENVIRONMENTAL PROTECTION AGENCY Motion for Briefing Schedule
Date: Thursday, August 29, 2013 5:12:00 PM
Attachments: CEI2.eot.pdf
CEI_EOT2.ord.pdf

FYI - -

Here's what our AUSA, Mark Nebeker, has filed in the CEI v. EPA (13-1074) matter re: billings for Gina text messages.

He also filed the Answer, which I'll send to you separately if you want it.

(b)(5) ACP, (b)(5) AWP [redacted]

Cindy
564-2690

From: Nebeker, Mark (USADC) [mailto:Mark.Nebeker@usdoj.gov]
Sent: Thursday, August 29, 2013 4:58 PM
To: Anderson, Cindy
Subject: FW: Activity in Case 1:13-cv-01074-RMC COMPETITIVE ENTERPRISE INSTITUTE v. UNITED STATES ENVIRONMENTAL PROTECTION AGENCY Motion for Briefing Schedule

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 Motion for Briefing Schedule

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 Nebeker, William on 8/29/2013 at 4:55 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:	7

Docket Text:

MOTION for Briefing Schedule by UNITED STATES ENVIRONMENTAL PROTECTION AGENCY (Attachments: # (1) 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=8/29/2013] [FileNumber=3750067-0] [71ae52097206963fa9f8a1d274e7824cf8442ae529bcc365f3ef195a393773fa2c810dee8b8d61adc815548fa0cd6c35e7c42abc5214f105db6ca5309c247876]]
Document description: Text of Proposed Order
Original filename:suppressed
Electronic document Stamp:
[STAMP dcecfStamp_ID=973800458 [Date=8/29/2013] [FileNumber=3750067-1] [709b9f8b31aedfdfbd337ad3ddf4d832bee61ec29cf4a5f130001a3a9e8f6048dac201db21043a3d6ae8174625b26d47e0c885a47df1900ed5803fa0f5326c37]]

From:	Anderson, Cindy
To:	Weinstock, Larry; Reilly, Tom
Subject:	FW: CEI FOIA (13-009249) August 8, 2013
Date:	Monday, February 24, 2014 11:10:00 AM
Attachments:	December 2009 Bill.reset.xlsx July 2011Bill.reset.xlsx Response Letter phone bill.docx [Untitled].pdf
Importance:	High

Tom & Larry -

(b)(5) ACP, (b)(5) AWP, (b)(5) DPP [redacted]

Thanks all!

Cindy Anderson
(202) 564-2690

-----Original Message-----
From: Anderson, Cindy
Sent: Thursday, February 20, 2014 1:59 PM
To: Weinstock, Larry; Reilly, Tom
Subject: FW: CEI FOIA (13-009249) August 8, 2013
Importance: High

Larry & Tom -

I just spoke with Kevin Minoli in OGC front office about this response.

2 important questions:

(b)(5) ACP, (b)(5) AWP, (b)(5) DPP [redacted]

(b)(5) ACP, (b)(5) AWP, (b)(5) DPP

Thanks!

Cindy Anderson
(202) 564-2690

-----Original Message-----
From: Anderson, Cindy
Sent: Wednesday, February 19, 2014 2:20 PM
To: Weinstock, Larry; Minoli, Kevin
Cc: McDermott, Marna; Miller, Kevin
Subject: FW: CEI FOIA (13-009249) August 8, 2013

Thanks Larry.

(b)(5) ACP, (b)(5) AWP, (b)(5) DPP

Kevin -

(b)(5) ACP, (b)(5) AWP, (b)(5) DPP

Cindy Anderson
(202) 564-2690

-----Original Message-----
From: Weinstock, Larry
Sent: Wednesday, February 19, 2014 2:02 PM
To: Anderson, Cindy; Miller, Kevin
Cc: McDermott, Marna
Subject: RE: CEI FOIA (13-009249) August 8, 2013

I fixed the excel files. I can't do it in pdf yet because I lost my adobe when my computer was upgraded.

(b) (5) DPP, (b) (5) ACP

Larry

-----Original Message-----
From: Anderson, Cindy
Sent: Wednesday, February 19, 2014 1:53 PM
To: Weinstock, Larry; Miller, Kevin
Cc: McDermott, Marna
Subject: RE: CEI FOIA (13-009249) August 8, 2013
Importance: High

Larry -

Kevin Miller is not in the office today (and might be out again tomorrow).

I mentioned this FOIA response to Kevin Minoli when he was in Lynn Kelly's office yesterday.

(b)(5) ACP, (b)(5) AWP, (b)(5) DPP [redacted].

Thanks!

Cindy Anderson
(202) 564-2690

-----Original Message-----
From: Weinstock, Larry
Sent: Friday, February 14, 2014 5:31 PM
To: Weinstock, Larry; Anderson, Cindy; Miller, Kevin; Newton, Jonathan
Cc: McDermott, Marna
Subject: RE: CEI FOIA (13-009249) August 8, 2013
Importance: High

(b) (5) DPP, (b) (5) ACP [redacted]

Thanks
Larry

-----Original Message-----
From: Weinstock, Larry
Sent: Friday, February 07, 2014 3:14 PM
To: Anderson, Cindy; Miller, Kevin; Newton, Jonathan
Cc: McDermott, Marna
Subject: RE: CEI FOIA (13-009249) August 8, 2013

Here is the proposed response to Chris Horner asking for phone bills for two months. Please let me know if this is OK to send. I would send the pdf files of the call and pdf the letter after signing and dating it. I am including the Xcel version of the bills as an FYI

Thanks
Larry

From: Weinstock, Larry
Sent: Friday, February 07, 2014 1:47 PM
To: Anderson, Cindy; Miller, Kevin
Subject: RE: CEI FOIA (13-009249) August 8, 2013

(b) (5) DPP, (b) (5) ACP [redacted]

Larry

-----Original Message-----
From: Anderson, Cindy
Sent: Friday, February 07, 2014 1:35 PM
To: Miller, Kevin
Cc: Weinstock, Larry
Subject: FW: CEI FOIA (13-009249) August 8, 2013

Importance: High

Kevin -

I talked w/Larry Weinstock/OAR this morning about this pending CEI FOIA request.

(b) (5) DPP, (b) (5) ACP [redacted]

What do you think?

Cindy Anderson
EPA/OGC
(202) 564-2690

From: Anderson, Cindy
To: Weinstock, Larry
Subject: FW: CEI FOIA (13-009249) August 8, 2013
Date: Thursday, November 21, 2013 11:07:00 AM

Larry –

(b) (5) DPP, (b) (5) ACP [redacted]

I'll try to call you later this afternoon but I'm slammed right now.

Cindy
564-2690

From: Anderson, Cindy
Sent: Thursday, November 21, 2013 10:34 AM
To: Weinstock, Larry
Subject: RE: CEI FOIA (13-009249) August 8, 2013

I don't have these; I will call you later.

(b) (5) DPP, (b) (5) ACP [redacted]

Cindy
564-2690

From: Weinstock, Larry
Sent: Thursday, November 21, 2013 10:29 AM
To: Anderson, Cindy
Subject: FW: CEI FOIA (13-009249) August 8, 2013

As you know OAR is supposed to be the lead for this can you send me the bills so I can send then to OA.

Thanks
Larry

From: Reilly, Tom
Sent: Thursday, November 21, 2013 10:26 AM
To: Weinstock, Larry
Cc: Hilton, Patricia
Subject: RE: CEI FOIA (13-009249) August 8, 2013

Larry,

We've provided everything to Cindy some time ago

Tom

From: Weinstock, Larry
Sent: Thursday, November 21, 2013 10:18 AM
To: Reilly, Tom
Cc: Hilton, Patricia
Subject: FW: CEI FOIA (13-009249) August 8, 2013

Tom,

Have you been able to find the bills?

Thanks,
Larry

From: Weinstock, Larry
Sent: Tuesday, October 29, 2013 10:45 AM
To: Reilly, Tom
Cc: Hilton, Patricia; Ketcham-Colwill, Nancy
Subject: FW: CEI FOIA (13-009249) August 8, 2013

Tom,

Please provide the bills referenced (and highlighted) below.

Many thanks,
Larry

From: Anderson, Cindy
Sent: Tuesday, October 29, 2013 10:40 AM
To: Weinstock, Larry; Newton, Jonathan
Cc: Ketcham-Colwill, Nancy
Subject: RE: CEI FOIA (13-009249) August 8, 2013

(b) (5) DPP, (b) (5) ACP [redacted]

[redacted]

Cindy
564-2690

From: Weinstock, Larry
Sent: Tuesday, October 29, 2013 10:37 AM
To: Anderson, Cindy; Newton, Jonathan
Cc: Ketcham-Colwill, Nancy
Subject: RE: CEI FOIA (13-009249) August 8, 2013

(b) (5) DPP, (b) (5) ACP [redacted]

Thanks
Larry

From: Anderson, Cindy
Sent: Tuesday, October 29, 2013 10:34 AM
To: Newton, Jonathan
Cc: Weinstock, Larry
Subject: CEI FOIA (13-009249) August 8, 2013
Importance: High

Larry & Jonathan –

(b) (5) DPP, (b) (5) ACP [redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

(b) (5) DPP, (b) (5) ACP [redacted]

Thanks!

Cindy Anderson
EPA/OGC
(202) 564-2690

From: Anderson, Cindy
To: Weinstock, Larry
Cc: Miller, Kevin; Minoli, Kevin; Reilly, Tom
Subject: FW: CEI FOIA (13-009249) August 8, 2013
Date: Tuesday, February 25, 2014 11:49:00 AM
Attachments: December 2009 Bill.reset.xlsx
July 2011Bill.reset.xlsx
CEI request 13-9249 (2.25.14 draft).docx
Importance: High

(b) (5) DPP, (b) (5) ACP
(b) (5) DPP, (b) (5) ACP
(b) (5) DPP, (b) (5) ACP

Larry et al.

Attached is an updated draft letter response to Chris Horner's August 8, 2013 FOIA request for bills for usage on Gina McCarthy's mobile device for two particular billing periods, those ending Dec. 23, 1009 (when I think that Verizon was the service provider) and the one ending July 5, 2011 (when she had switched to AT&T as the service provider).

(b) (5) DPP, (b) (5) ACP

Please take a look at this at your earliest convenience so it can be mailed (and/or emailed) to Mr. Horner as soon as possible.

Larry -
(b) (5) DPP, (b) (5) ACP ?

Thanks!

Cindy Anderson
(202) 564-2690

-----Original Message-----
From: Anderson, Cindy
Sent: Thursday, February 20, 2014 1:59 PM
To: Weinstock, Larry; Reilly, Tom
Subject: FW: CEI FOIA (13-009249) August 8, 2013
Importance: High

Larry & Tom -

I just spoke with Kevin Minoli in OGC front office about this response.

2 important questions:

(b)(5) ACP, (b)(5) AWP, (b)(5) DPP

Thanks!

Cindy Anderson
(202) 564-2690

-----Original Message-----
From: Anderson, Cindy
Sent: Wednesday, February 19, 2014 2:20 PM
To: Weinstock, Larry; Minoli, Kevin
Cc: McDermott, Marna; Miller, Kevin
Subject: FW: CEI FOIA (13-009249) August 8, 2013

Thanks Larry.

(b) (5) DPP, (b) (5) ACP [redacted]

[redacted]?

Kevin -

(b) (5) DPP, (b) (5) ACP [redacted]

Cindy Anderson
(202) 564-2690

-----Original Message-----
From: Weinstock, Larry
Sent: Wednesday, February 19, 2014 2:02 PM
To: Anderson, Cindy; Miller, Kevin
Cc: McDermott, Marna
Subject: RE: CEI FOIA (13-009249) August 8, 2013

I fixed the excel files. I can't do it in pdf yet because I lost my adobe when my computer was upgraded.

(b) (5) DPP, (b) (5) ACP [redacted]

Larry

-----Original Message-----
From: Anderson, Cindy
Sent: Wednesday, February 19, 2014 1:53 PM
To: Weinstock, Larry; Miller, Kevin
Cc: McDermott, Marna
Subject: RE: CEI FOIA (13-009249) August 8, 2013
Importance: High

Larry -

Kevin Miller is not in the office today (and might be out again tomorrow).

I mentioned this FOIA response to Kevin Minoli when he was in Lynn Kelly's office yesterday.

(b)(5) ACP, (b)(5) AWP, (b)(5) DPP [redacted]

Thanks!

Cindy Anderson
(202) 564-2690

-----Original Message-----
From: Weinstock, Larry
Sent: Friday, February 14, 2014 5:31 PM
To: Weinstock, Larry; Anderson, Cindy; Miller, Kevin; Newton, Jonathan
Cc: McDermott, Marna
Subject: RE: CEI FOIA (13-009249) August 8, 2013
Importance: High

(b) (5) DPP, (b) (5) ACP [redacted]

Thanks
Larry

-----Original Message-----
From: Weinstock, Larry
Sent: Friday, February 07, 2014 3:14 PM
To: Anderson, Cindy; Miller, Kevin; Newton, Jonathan
Cc: McDermott, Marna
Subject: RE: CEI FOIA (13-009249) August 8, 2013

Here is the proposed response to Chris Horner asking for phone bills for two months. Please let me know if this is OK to send. I would send the pdf files of the call and pdf the letter after signing and dating it. I am including the Xcel version of the bills as an FYI

Thanks
Larry

From: Weinstock, Larry
Sent: Friday, February 07, 2014 1:47 PM
To: Anderson, Cindy; Miller, Kevin
Subject: RE: CEI FOIA (13-009249) August 8, 2013

(b) (5) DPP, (b) (5) ACP [redacted]

Larry

-----Original Message-----
From: Anderson, Cindy
Sent: Friday, February 07, 2014 1:35 PM
To: Miller, Kevin
Cc: Weinstock, Larry
Subject: FW: CEI FOIA (13-009249) August 8, 2013
Importance: High

Kevin -

I talked w/Larry Weinstock/OAR this morning about this pending CEI FOIA request.

(b) (5) DPP, (b) (5) ACP [redacted]

What do you think?

Cindy Anderson
EPA/OGC
(202) 564-2690

From: Anderson, Cindy
To: Miller, Kevin; Minoli, Kevin
Subject: FW: CEI FOIA (2013-009249) August 8, 2013
Date: Wednesday, November 20, 2013 1:36:00 PM
Attachments: EPA-HQ-2013-009249.pdf
Horner (2013-009249) Aug.2013.pdf
Horner (McCarthy Phone PDA Bills Dec 23, 2009, July 5, 2011)(c).pdf
Importance: High

Kevin & Kevin - -

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

Cindy
564-2690

From: Anderson, Cindy
Sent: Tuesday, October 29, 2013 4:38 PM
To: Minoli, Kevin
Cc: Miller, Kevin
Subject: FW: CEI FOIA (2013-009249) August 8, 2013
Importance: High

Kevin(s) –

(b) (5) DPP, (b) (5) ACP [redacted]

Cindy
564-2690

From: Ketcham-Colwill, Nancy
Sent: Tuesday, October 29, 2013 2:55 PM
To: Anderson, Cindy
Cc: Weinstock, Larry; McDermott, Marna
Subject: RE: CEI FOIA (2013-009249) August 8, 2013

(b) (5) DPP, (b) (5) ACP [redacted]

(b) (5) DPP, (b) (5) ACP [redacted]? Thanks for your help, Cindy.

From: Anderson, Cindy
Sent: Tuesday, October 29, 2013 2:21 PM
To: Ketcham-Colwill, Nancy
Cc: Weinstock, Larry
Subject: FW: CEI FOIA (2013-009249) August 8, 2013

Nancy –

(b) (5) DPP, (b) (5) ACP [redacted]?

(b) (5) DPP, (b) (5) ACP [redacted]

Please let me know what you think?
Thanks!

Cindy
564-2690

From: Weinstock, Larry
Sent: Tuesday, October 29, 2013 2:14 PM
To: Anderson, Cindy
Subject: RE: CEI FOIA (2013-009249) August 8, 2013

(b) (5) DPP, (b) (5) ACP [redacted]. I will be out for the rest of the afternoon.

Larry

From: Anderson, Cindy
Sent: Tuesday, October 29, 2013 2:07 PM

To: Weinstock, Larry
Subject: FW: CEI FOIA (2013-009249) August 8, 2013

Larry –

(b) (5) DPP, (b) (5) ACP [redacted]?

I'll call you separately sometime later this afternoon, after my 2:30 call w/AUSA regarding CEI lawsuit about bills for text messages, to discuss the August 8 FOIA.

Thanks

Cindy
564-2690

From: Wachter, Eric
Sent: Tuesday, October 29, 2013 12:44 PM
To: Anderson, Cindy
Cc: Newton, Jonathan; Hope, Brian; Weinstock, Larry
Subject: RE: CEI FOIA (2013-009249) August 8, 2013

Hello, Cindy,
(b) (5) DPP, (b) (5) ACP [redacted]

Thanks,
Eric

From: Anderson, Cindy
Sent: Tuesday, October 29, 2013 10:34 AM
To: Newton, Jonathan
Cc: Weinstock, Larry
Subject: CEI FOIA (13-009249) August 8, 2013
Importance: High

Larry & Jonathan –

(b) (5) DPP, (b) (5) ACP [redacted]

[redacted]

(b) (5) DPP, (b) (5) ACP [redacted]

[redacted]

[redacted]

[redacted]

Thanks!

Cindy Anderson
EPA/OGC
(202) 564-2690

From: Weinstock, Larry
To: Anderson, Cindy
Subject: FW: CEI FOIA disclosure scheduled for Friday, Dec. 6
Date: Thursday, December 12, 2013 10:07:58 AM
Attachments: 12.5.13 final 25 pp_Redacted.pdf (b) (5) DPP, (b) (5) ACP
draft CEI Release (12.6.13) cover ltr 12.5cha.docx (b) (5) DPP, (b) (5) ACP

(b) (5) DPP, (b) (5) ACP [redacted] ? It sure look that way to me.

Thanks,
Larry

PS just starting on the PDF's I should finish my review today and Talk to Joe tomorrow.

From: Stewart, Lori
Sent: Wednesday, December 11, 2013 4:00 PM
To: Weinstock, Larry
Subject: FW: CEI FOIA disclosure scheduled for Friday, Dec. 6

From: Minoli, Kevin
Sent: Friday, December 06, 2013 8:17 AM
To: Stewart, Lori
Subject: FW: CEI FOIA disclosure scheduled for Friday, Dec. 6

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

From: Minoli, Kevin
Sent: Friday, December 06, 2013 8:16 AM
To: Fritz, Matthew; 'stewart.ori@epa.gov'
Cc: Anderson, Cindy; Miller, Kevin
Subject: CEI FOIA disclosure scheduled for Friday, Dec. 6

Matt and Lori-

(b)(5) ACP, (b)(5) AWP, (b)(5) [redacted]

(b)(5) ACP, (b)(5) AWP, (b)(5) [redacted]

[redacted]

Our lead on the case is Cindy Anderson, who may be reached at 564-2690, or you may email me (I will be away from my phone today).

Thank you, 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
To: Minoli, Kevin
Subject: FW: CEI FOIA disclosure scheduled for Friday, Dec. 6
Date: Friday, December 06, 2013 9:16:00 AM

Kevin - -

(b) (5) DPP, (b) (5) ACP [redacted]

[redacted]

I will be in the office all next week (after Monday), as well as Mon. Dec. 16
(b) (5) DPP, (b) (5) ACP [redacted]

Thanks-

Cindy
564-2690

From: Fritz, Matthew
Sent: Friday, December 06, 2013 8:19 AM
To: Minoli, Kevin; stewart.ori@epa.gov
Cc: Anderson, Cindy; Miller, Kevin
Subject: RE: CEI FOIA disclosure scheduled for Friday, Dec. 6

Kevin,

Thank you for the update. For awareness purposes, I will be out of the country next week but reachable.

From: Minoli, Kevin
Sent: Friday, December 06, 2013 8:16 AM
To: Fritz, Matthew; stewart.ori@epa.gov
Cc: Anderson, Cindy; Miller, Kevin
Subject: CEI FOIA disclosure scheduled for Friday, Dec. 6

Matt and Lori-

(b)(5) ACP, (b)(5) AWP, (b)(5) [redacted]

(b)(5) ACP, (b)(5) AWP, (b)(5) [redacted]

(b) (5) DPP, (b) (5) ACP [redacted]

[redacted].

Our lead on the case is Cindy Anderson, who may be reached at 564-2690, or you may email me (I will be away from my phone today).

Thank you, 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: Kelly, Lynn
To: Miller, Kevin
Subject: RE: phone bill FOIA response and Q&As
Date: Thursday, July 25, 2013 2:11:21 PM

(b) (5) DPP, (b) (5) ACP – I will forward the email to her.

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.

From: Miller, Kevin
Sent: Thursday, July 25, 2013 2:06 PM
To: Kelly, Lynn
Subject: FW: phone bill FOIA response and Q&As

(b) (5) DPP, (b) (5) ACP ?

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

From: Ketcham-Colwill, Nancy
Sent: Thursday, July 25, 2013 1:53 PM
To: Minoli, Kevin; Goffman, Joseph; Reynolds, Thomas; Johnson, Alisha
Cc: Weinstock, Larry; Miller, Kevin
Subject: phone bill FOIA response and Q&As

(b) (5) DPP, (b) (5) ACP [redacted] Thanks!

From: Miller, Kevin
To: Anderson, Cindy
Subject: RE: telework
Date: Monday, September 16, 2013 9:14:14 AM

Ok. Thanks.

From: Anderson, Cindy
Sent: Monday, September 16, 2013 9:09 AM
To: Miller, Kevin; OGC GLO ILPG
Subject: RE: telework

Kevin –

I had not realized that you are teleworking every Monday.

(b) (5) DPP, (b) (5) ACP [redacted]

[redacted]

Lynn –

(b) (5) DPP, (b) (5) ACP [redacted]

Cindy
564-2690

From: Miller, Kevin
Sent: Monday, September 16, 2013 8:28 AM
To: OGC GLO ILPG
Subject: telework

All,

Just a reminder, I am teleworking on Mondays. Please feel free to call anytime. Thanks.

Kevin

From: Nguyen, Quoc
To: Miller, Kevin
Subject: Reg Review Agenda
Date: Wednesday, December 04, 2013 3:11:53 PM
Attachments: GLO reg review 12-4-13 ILPG.DOCX (b) (5) DPP, (b) (5) ACP

Should I send this to the Front Office? If I don't hear back from you, I will send it along.

Quoc

Quoc P. Nguyen
Office of General Counsel
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20010
202-564-6343

CONFIDENTIAL communication for internal deliberations only; may contain deliberative, attorney-client, attorney work product, or otherwise privileged material; do not distribute outside EPA or DOJ.

From: Kelly, Lynn
To: Miller, Kevin
Subject: Reminder: talk to Kevin RE: CEI case strategy plan forward.
Date: Wednesday, September 04, 2013 10:48:36 AM
Attachments: [redacted].docx
(b) (5) DPP, (b) (5) ACP, (b) (5) AWP [redacted].docx
Doc 6 ecf d_Answer.pdf
Doc 1 Complaint.pdf
Q&As.pdf
Email negotiation.pdf

(b) (5) DPP, (b) (5) ACP [redacted]

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: Albright, Scott
To: Miller, Kevin
Subject: biweekly items
Date: Tuesday, September 24, 2013 5:01:09 PM
Attachments: GLO reg review agenda 9.25.13.docx (b) (5) DPP, (b) (5) ACP

---

both the items section and litigation sections are updated for ILPG.

Scott Albright
U.S. EPA
Office of General Counsel
Information Law Practice Group
(202) 564-2884

From: Anderson, Cindy
To: Miller, Kevin
Subject: draft cover letter for release (Dec. 6, this Friday) to CEI of text message billing
Date: Tuesday, December 03, 2013 12:39:15 PM
Attachments: CEI Release (12.6.13) cover ltr.docx (b) (5) DPP, (b) (5) ACP, (b) (5) AWP
Importance: High

Kevin - -

(b) (5) DPP, (b) (5) ACP

Could you please take a look at this and comment/edit?
Thanks!

Cindy Anderson
EPA/OGC
(202) 564-2690

From: Kelly, Lynn
To: Miller, Kevin
Subject: DRAFTS of CEI REPLY
Date: Thursday, October 24, 2013 11:43:00 AM
Attachments: Doc 24 01268 MSJ.pdf
Doc 27 Oppn.pdf
Draft Reply 101813.docx
HQ-FOI-01268-12 DRAFT Mallon Declaration TM 092013 0714 edited.docx
HQ-FOI-01268-12 DRAFT Wachter Supplemental Declaration eric edits.docx
[Untitled].pdf

(b) (5) DPP, (b) (5) ACP, (b) (5) AWP

Hi Kevin,

(b) (5) DPP, (b) (5) ACP, (b) (5) AWP

I do plan to go to lunch and pick up when I get back so I thought I would send these in case you are staying behind.

Thanks!

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: Kelly, Lynn
To: Bennett, Karen
Subject: Examples of Complaints
Date: Wednesday, October 30, 2013 3:57:00 PM
Attachments: CEI v EPA 13_434.pdf
Answer.pdf
Doc 6 ecf d_Answer.pdf
Doc 1 Complaint.pdf

(b)(5) ACP, (b)(5) AWP [redacted]

[redacted]

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: Bruce, Barbara
Cc: Kelly, Lynn
Subject: FOIA request (CEI) EPA-HQ-2013-006937
Date: Thursday, July 25, 2013 2:04:32 PM
Importance: High

Barbara- -

Could you please download and create a FOIA file/folder for this request for which OAR is lead, along with HR on another aspect?

(b)(5) ACP, (b)(5) AWP [redacted]

[redacted]

[redacted]

Thanks!
Cindy
564-2690

From:	Lo, Michelle (USADC)
To:	Kelly, Lynn
Subject:	FW: CEI v. EPA, 13-0779 (BAH)
Date:	Wednesday, July 31, 2013 3:44:01 PM
Attachments:	CEI v EPA No 13-779 draft Stipulation of Dismissal DOCKET NUMBER FIXED (2).doc

(b)(5) ACP, (b)(5) AWP [redacted]

From: Lo, Michelle (USADC)
Sent: Wednesday, July 31, 2013 3:41 PM
To: 'Hans Bader'
Cc: Sam Kazman; Chris Horner
Subject: RE: CEI v. EPA, 13-0779 (BAH)

Dear Hans,

Thank you for the call just now. To summarize our discussion, I've inquired with the EPA about your question below, and EPA has explained that the Agency did not locate any text messages responsive to your FOIA request at issue in this case. Moreover and in any event, Ms. McCarthy uses text messaging to communicate with her family. Ms. McCarthy uses email for government business, and text messaging for family and other personal business. These personal text messages are unrelated to Agency business, and thus were not required to be preserved by the Agency.

It's my understanding that you will be filing a stipulation of dismissal in this case. I do have one edit, which is to add "with each party to bear its own costs and fees" to the end of the stipulation. I have also made a formatting change to the signature block since my telephone number is changing. If these changes are acceptable to you, you are authorized to file the stipulation on behalf of the parties.

Thanks,
Michelle

Michelle Lo
Assistant United States Attorney
Civil Division
555 4th Street, N.W.
Washington, D.C. 20530
(202) 252-2541 – ***Please note new number***
(202) 514-8780 fax
Michelle.Lo2@usdoj.gov

From: Hans Bader [mailto:HBader@cei.org]
Sent: Monday, July 29, 2013 3:02 PM
To: Lo, Michelle (USADC)
Cc: Sam Kazman; Chris Horner
Subject: RE: CEI v. EPA, 13-0779 (BAH)

One final thing: My colleagues are curious and want an answer to the following question before we dismiss the case: How can there be no responsive records (as stated by EPA in its no-records response, and echoed in the answer), that is, no text messages, when EPA has elsewhere produced documents to us saying that Ms. McCarthy sent hundreds of text messages using her EPA device (see the attached administrative response by EPA to Chris Horner's FOIA request – the first attached file is EPA's cover letter in response to that request, and the second is its substantive response)? I'd like to get that clarification on that issue before filing the stipulation I sent earlier.

Thanks,

Hans Bader
CEI

From: Hans Bader
Sent: Monday, July 29, 2013 12:17 PM
To: 'Lo, Michelle (USADC)'
Cc: Sam Kazman
Subject: RE: CEI v. EPA, 13-0779 (BAH)

Oops. The draft stipulation I sent in the below email had the wrong docket number on it. That has been fixed in the attached draft stipulation.

From: Hans Bader
Sent: Monday, July 29, 2013 12:11 PM
To: 'Lo, Michelle (USADC)'
Cc: Sam Kazman
Subject: RE: CEI v. EPA, 13-0779 (BAH)

Chris Horner remains very skeptical of the no-records response. Nevertheless, it seems to me that it may not be worth the candle to keep litigating this particular case, as a prudential matter.

Accordingly, plaintiff would be willing to file the attached stipulation of dismissal. If this is acceptable to you, then it can be filed with the court, and it will not be necessary to set a briefing schedule.

Sorry for the delay in responding.

Thank you.

Hans Bader
Competitive Enterprise Institute
(202) 331-2278
hbader@cei.org

From: Lo, Michelle (USADC) [mailto:Michelle.Lo2@usdoj.gov]
Sent: Monday, July 29, 2013 10:11 AM
To: Hans Bader
Subject: RE: CEI v. EPA, 13-0779 (BAH)

Dear Hans:

Per Judge Howell's Standing Order, the parties are to jointly prepare and submit a report indicating whether the agency has made a final determination on compliance with the FOIA request at issue and propose a schedule for the filing of dispositive motions within 14 days after any defendant appears, or by this Friday, August 2. As you know, the EPA issued a "no records" response to CEI's FOIA request on May 31, 2013. Provided CEI intends to proceed with this litigation, we propose the following briefing schedule:

EPA's Motion for Summary Judgment	September 16, 2013
CEI's Opposition to EPA's Motion for Summary Judgment	October 16, 2013
EPA's Reply	November 6, 2013

Please let me know if the above proposal is agreeable to you. Thank you.

Michelle Lo
Assistant United States Attorney
Civil Division
555 4th Street, N.W.
Washington, D.C. 20530
(202) 252-2541 – ***Please note new number***
(202) 514-8780 fax
Michelle.Lo2@usdoj.gov

From: Hans Bader [mailto:HBader@cei.org]
Sent: Wednesday, July 17, 2013 6:06 PM
To: Lo, Michelle (USADC)
Subject: RE: CEI v. EPA, 13-0779 (BAH)

I am still waiting to hear back. Sorry about the delay.

From: Lo, Michelle (USADC) [mailto:Michelle.Lo2@usdoj.gov]
Sent: Wednesday, July 17, 2013 6:00 PM
To: Hans Bader
Subject: RE: CEI v. EPA, 13-0779 (BAH)

Hans:

Have you had a chance to discuss with your colleagues whether CEI intends to move forward with this litigation in light of the EPA's no records response?

Thanks,
Michelle

From: Lo, Michelle (USADC)
Sent: Thursday, July 11, 2013 4:12 PM
To: Hans Bader <HBader@cei.org> (HBader@cei.org)
Subject: CEI v. EPA, 13-0779 (BAH)

Hans:

Attached is the EPA's response to CEI's FOIA request for "copies of all text messages sent by Assistant Administrator for Air and Radiation Gina McCarthy on a mobile telephone provided for her use by the Agency" that I was referring to on our call just now. Please let me know if CEI believes that further litigation of this case will be necessary in light of the EPA's no records response. Thank you.

<< File: Final Response 6005.pdf >>

Michelle Lo
Assistant United States Attorney
Civil Division
555 4th Street, N.W.
Washington, D.C. 20530
(202) 514-5134; (202) 514-8780 fax
Michelle.Lo2@usdoj.gov

From: Kelly, Lynn
To: Lo, Michelle (USADC)
Subject: FW: CEI v. EPA, 13-0779 (BAH)
Date: Friday, September 06, 2013 4:17:00 PM

Michelle,

(b) (5) DPP, (b) (5) ACP, (b) (5) AWP [redacted]

[redacted]

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: McDermott, Marna
Sent: Friday, September 06, 2013 3:33 PM
To: Kelly, Lynn
Cc: Miller, Kevin
Subject: RE: CEI v. EPA, 13-0779 (BAH)

(b) (5) DPP, (b) (5) ACP, (b) (5) AWP [redacted]

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

From: Kelly, Lynn
Sent: Friday, September 06, 2013 11:15 AM
To: McDermott, Marna
Cc: Miller, Kevin
Subject: FW: CEI v. EPA, 13-0779 (BAH)

(b) (5) DPP, (b) (5) ACP, (b) (5) AWP [redacted]

Thanks for your assistance,

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: Lo, Michelle (USADC) [mailto:Michelle.Lo2@usdoj.gov]
Sent: Friday, September 06, 2013 11:08 AM
To: Kelly, Lynn
Subject: RE: CEI v. EPA, 13-0779 (BAH)

(b) (5) DPP, (b) (5) ACP, (b) (5) AWP [redacted]

[redacted]

From: Lo, Michelle (USADC)
Sent: Friday, August 02, 2013 9:36 AM
To: Kelly, Lynn (Kelly.Lynn@epa.gov)
Subject: FW: CEI v. EPA, 13-0779 (BAH)

From: chornerlaw@aol.com [mailto:chornerlaw@aol.com]
Sent: Thursday, August 01, 2013 10:05 PM
To: Lo, Michelle (USADC); hbader@cei.org
Cc: skazman@cei.org
Subject: RE: CEI v. EPA, 13-0779 (BAH)

Dear Michelle,

Rather than endless rounds of clarification, though we have only sought one clear statement, I *think* you may just clarified the ambiguity as explained below. But if you plainly state what is implied we can dismiss.

Below you more strongly imply what seemed the implication before, but is still not stated outright with no room for misunderstanding. That is that Ms. McCarthy *only* used the texting function on her EPA phone for personal messages; and because she never used it for work this is why EPA has preserved none of her texts.

If that is what you were saying, would you please confirm that and that this is also EPA's position. In that case, you need not take any further questions to EPA and I accept the 'no records' response as sufficient such that we will dismiss.

I look forward to your reply.

Best,
Chris

Sent from my Verizon Wireless 4G LTE smartphone

"Lo, Michelle (USADC)" wrote:

Chris,

I will take your request back to the agency, but I would like to be clear in what I will be communicating to the agency. The Agency has already explained that Ms. McCarthy uses text messaging for family and other personal business, not government business and that, because personal text messages are unrelated to Agency business, they were not required to be preserved by the Agency. I am not sure how you read this statement to mean that Ms. McCarthy uses the texting function for EPA business. As I explained to Hans, this FOIA request deals with text messages on 18 specific dates, and we have already provided a very clear explanation for the "no records" response.

If what you are asking is – did Ms. McCarthy send ever any text messages that were work-related – I can ask the EPA if it would be willing to respond to this question even though it is well outside the scope of the FOIA request and does not alter the fact that the EPA did not locate any text messages on the 18 specific dates. If the EPA is willing to respond to the question of whether Ms. McCarthy ever sent any text messages that were work-related, can you represent that you will dismiss this case? As much as I think briefing would be an unnecessary use of the Court's and the parties' resources, it may be that we end up having to brief this matter rather than engage in endless rounds of clarification.

Best,
Michelle

From: Chris Horner [mailto:chornerlaw@aol.com]
Sent: Thursday, August 01, 2013 6:41 PM
To: HBader@cei.org; Lo, Michelle (USADC)
Cc: SKazman@cei.org
Subject: Re: CEI v. EPA, 13-0779 (BAH)

Dera Michelle,

Please consider the following, in addition to what Hans has written you.

EPA's obligation is to *demonstrate* 'no records'. So far they have stated it. Demonstration is found in the bills for her device.

We have obtained what EPA claims to be the relevant (texting) portions of those bills, showing extensive texting activity, so extensive that it is thoroughly implausible that Ms. McCarthy didn't text on those dates.

After we calculated the probability (1 in 7.9 sextillion), we received your statement on EPA's behalf including the portion that is the basis for the ambiguity that Hans refers to and under which we cannot dismiss, but possibly can if you clarify what it is saying:

> Ms. McCarthy uses text messaging to communicate with her family. Ms. McCarthy uses email for government business, and text messaging for family and other personal business. These personal text

messages are unrelated to Agency business, and thus were not required to be preserved by the Agency.

To me this plainly implied that EPA's position is that Ms. McCarthy uses email for work and the text messaging function*only* for personal messages, and therefore EPA has not preserved her text messaging. If that is the case, and EPA state it, then the 'no records' response is sufficient and we can, I believe, dismiss.

However, another of us suggested that in context it implies something materially different, that while Ms. McCarthy uses the texting function for EPA business, on the 18 dates at issue in this matter all texts sent or received by Ms. McCarthy were personal, which is why those specific text messages are not preserved. We have not had our stats people run the probability of that but I suggest it is for all practical purposes the same as the idea that she did not text on those 18 dates.

Regardless, it may imply both but we cannot reasonably discern which, and so we ask you to state which is EPA's assertion. This is material because of EPA's obligation to demonstrate, and the sole (and most reasonable) demonstration -- her phone bills -- indicating that one of these readings is implausible, and under that reading therefore so is the 'no records' claim. The other reading is more plausible and makes the 'no records' response plausible.

So, we simply would like clarification of the ambiguous statement: over the period in question, did EPA preserve some of Ms. McCarthy's text messages -- those that someone determined were work-related -- or did they preserve none of them because they were all personal?

If we have a clear answer to this then depending on that clarification we can possibly dismiss, or we know we cannot justify doing so. We also cannot justify doing so in the absence of a clarification of an ambiguous assertion. Clarifying it is of course much simpler than further litigating this if that clarification would enable resolution and dismissal.

But as such, we need it to be a formal representation, in writing.

We look forward to your response.

Best,
Chris Horner

****
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: Hans Bader <HBader@cei.org>
To: Lo, Michelle (USADC) (USADC) <Michelle.Lo2@usdoj.gov>
Cc: Sam Kazman <SKazman@cei.org>; Chris Horner <chornerlaw@aol.com>
Sent: Thu, Aug 1, 2013 11:30 am
Subject: RE: CEI v. EPA, 13-0779 (BAH)

I should note that we have no objection to the proposed briefing schedule you suggested

(EPA's Motion for Summary Judgment September 16, 2013
CEI's Opposition to EPA's Motion for Summary Judgment October 16, 2013
EPA's Reply November 6, 2013).

But, hopefully, we can tie up the loose ends described below in my earlier email, and moot the need for any summary judgment motion (by resolving the case before then).

I will call you in a few minutes to try to get these things squared away.

Thanks,

Hans Bader
CEI

From: Hans Bader
Sent: Wednesday, July 31, 2013 8:25 PM
To: 'Lo, Michelle (USADC)'
Cc: Sam Kazman; Chris Horner
Subject: RE: CEI v. EPA, 13-0779 (BAH)

You are correct that I am only seeking the text messages for 18 specific dates, not the text messages in general. The reason I am asking about the text messages not being preserved in general over that period (July 9, 2009 to June 29, 2012) is just to confirm the apparent reason why the text messages don't exist for those 18 dates. Once this is understood, the query makes sense, to clarify matters and eliminate any ambiguities.

Thanks,

Hans

From: Lo, Michelle (USADC) [mailto:Michelle.Lo2@usdoj.gov]
Sent: Wednesday, July 31, 2013 6:19 PM
To: Hans Bader
Cc: Sam Kazman; Chris Horner
Subject: RE: CEI v. EPA, 13-0779 (BAH)

Dear Hans,

As I stated below and as reflected in the EPA's answer to the complaint, the Agency did not locate any text messages for the 18 dates specified by your FOIA request. As for your question about the preservation of Ms. McCarthy's text messages in general, we are now going well beyond the scope of this FOIA litigation, and I do not believe this is the appropriate forum to address this question.

Thanks,
Michelle

From: Hans Bader [mailto:HBader@cei.org]
Sent: Wednesday, July 31, 2013 4:08 PM
To: Lo, Michelle (USADC)
Cc: Sam Kazman; Chris Horner
Subject: RE: CEI v. EPA, 13-0779 (BAH)

Thanks for the clarifying details. Does this mean that her text messages in general weren't preserved, or just that the agency didn't locate any such messages for the 18 dates specified by the FOIA request? (Just tying up loose ends.)

Thanks,

Hans

From: Lo, Michelle (USADC) [mailto:Michelle.Lo2@usdoj.gov]
Sent: Wednesday, July 31, 2013 3:42 PM

To: Hans Bader
Cc: Sam Kazman; Chris Horner
Subject: RE: CEI v. EPA, 13-0779 (BAH)

Dear Hans,

Thank you for the call just now. To summarize our discussion, I've inquired with the EPA about your question below, and EPA has explained that the Agency did not locate any text messages responsive to your FOIA request at issue in this case. Moreover and in any event, Ms. McCarthy uses text messaging to communicate with her family. Ms. McCarthy uses email for government business, and text messaging for family and other personal business. These personal text messages are unrelated to Agency business, and thus were not required to be preserved by the Agency.

It's my understanding that you will be filing a stipulation of dismissal in this case. I do have one edit, which is to add "with each party to bear its own costs and fees" to the end of the stipulation. I have also made a formatting change to the signature block since my telephone number is changing. If these changes are acceptable to you, you are authorized to file the stipulation on behalf of the parties.

Thanks,
Michelle

Michelle Lo
Assistant United States Attorney
Civil Division
555 4th Street, N.W.
Washington, D.C. 20530
(202) 252-2541 – ***Please note new number***
(202) 514-8780 fax
Michelle.Lo2@usdoj.gov

From: Hans Bader [mailto:HBader@cei.org]
Sent: Monday, July 29, 2013 3:02 PM
To: Lo, Michelle (USADC)
Cc: Sam Kazman; Chris Horner
Subject: RE: CEI v. EPA, 13-0779 (BAH)

One final thing: My colleagues are curious and want an answer to the following question before we dismiss the case: How can there be no responsive records (as stated by EPA in its no-records response, and echoed in the answer), that is, no text messages, when EPA has elsewhere produced documents to us saying that Ms. McCarthy sent hundreds of text messages using her EPA device (see the attached administrative response by EPA to Chris Horner's FOIA request – the first attached file is EPA's cover letter in response to that request, and the second is its substantive response)? I'd like to get that clarification on that issue before filing the stipulation I sent earlier.

Thanks,

Hans Bader
CEI

From: Hans Bader
Sent: Monday, July 29, 2013 12:17 PM
To: 'Lo, Michelle (USADC)'
Cc: Sam Kazman
Subject: RE: CEI v. EPA, 13-0779 (BAH)

Oops. The draft stipulation I sent in the below email had the wrong docket number on it. That has been fixed in the attached draft stipulation.

From: Hans Bader
Sent: Monday, July 29, 2013 12:11 PM
To: 'Lo, Michelle (USADC)'
Cc: Sam Kazman
Subject: RE: CEI v. EPA, 13-0779 (BAH)

Chris Horner remains very skeptical of the no-records response. Nevertheless, it seems to me that it may not be worth the candle to keep litigating this particular case, as a prudential matter.

Accordingly, plaintiff would be willing to file the attached stipulation of dismissal. If this is acceptable to you, then it can be filed with the court, and it will not be necessary to set a briefing schedule.

Sorry for the delay in responding.

Thank you.

Hans Bader
Competitive Enterprise Institute
(202) 331-2278
hbader@cei.org

From: Lo, Michelle (USADC) [mailto:Michelle.Lo2@usdoj.gov]
Sent: Monday, July 29, 2013 10:11 AM
To: Hans Bader
Subject: RE: CEI v. EPA, 13-0779 (BAH)

Dear Hans:

Per Judge Howell's Standing Order, the parties are to jointly prepare and submit a report indicating whether the agency has made a final determination on compliance with the FOIA request at issue and propose a schedule for the filing of dispositive motions within 14 days after any defendant appears, or by this Friday, August 2. As you know, the EPA issued a "no records" response to CEI's FOIA request on May 31, 2013. Provided CEI intends to proceed with this litigation, we propose the following briefing schedule:

EPA's Motion for Summary Judgment	September 16, 2013
CEI's Opposition to EPA's Motion for Summary Judgment	October 16, 2013
EPA's Reply	November 6, 2013

Please let me know if the above proposal is agreeable to you. Thank you.

Michelle Lo
Assistant United States Attorney
Civil Division
555 4th Street, N.W.
Washington, D.C. 20530
(202) 252-2541 – ***Please note new number***
(202) 514-8780 fax
Michelle.Lo2@usdoj.gov

From: Hans Bader [mailto:HBader@cei.org]
Sent: Wednesday, July 17, 2013 6:06 PM

To: Lo, Michelle (USADC)
Subject: RE: CEI v. EPA, 13-0779 (BAH)

I am still waiting to hear back. Sorry about the delay.

From: Lo, Michelle (USADC) [mailto:Michelle.Lo2@usdoj.gov]
Sent: Wednesday, July 17, 2013 6:00 PM
To: Hans Bader
Subject: RE: CEI v. EPA, 13-0779 (BAH)

Hans:

Have you had a chance to discuss with your colleagues whether CEI intends to move forward with this litigation in light of the EPA's no records response?

Thanks,
Michelle

From: Lo, Michelle (USADC)
Sent: Thursday, July 11, 2013 4:12 PM
To: Hans Bader <HBader@cei.org> (HBader@cei.org)
Subject: CEI v. EPA, 13-0779 (BAH)

Hans:

Attached is the EPA's response to CEI's FOIA request for "copies of all text messages sent by Assistant Administrator for Air and Radiation Gina McCarthy on a mobile telephone provided for her use by the Agency" that I was referring to on our call just now. Please let me know if CEI believes that further litigation of this case will be necessary in light of the EPA's no records response. Thank you.

<< File: Final Response 6005.pdf >>

Michelle Lo
Assistant United States Attorney
Civil Division
555 4th Street, N.W.
Washington, D.C. 20530
(202) 514-5134; (202) 514-8780 fax
Michelle.Lo2@usdoj.gov

From: Kelly, Lynn
To: McDermott, Marna
Subject: FW: CEI v. EPA, 13-0779 (BAH)
Date: Tuesday, August 06, 2013 10:56:00 AM

(b) (5) DPP, (b) (5) ACP, (b) (5) AWP [redacted] Thanks!

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

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From: Kelly, Lynn
Sent: Friday, August 02, 2013 5:16 PM
To: 'Lo, Michelle (USADC)'
Subject: RE: CEI v. EPA, 13-0779 (BAH)

Thanks Michelle. You too.

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.

From: Lo, Michelle (USADC) [mailto:Michelle.Lo2@usdoj.gov]
Sent: Friday, August 02, 2013 5:14 PM
To: Kelly, Lynn
Subject: FW: CEI v. EPA, 13-0779 (BAH)

Lynn: (b) (5) DPP, (b) (5) ACP, (b) (5) AWP [redacted]. Thanks, and have a good weekend.

From: Hans Bader [mailto:HBader@cei.org]
Sent: Friday, August 02, 2013 4:44 PM
To: Lo, Michelle (USADC); Chris Horner
Cc: Sam Kazman
Subject: RE: CEI v. EPA, 13-0779 (BAH)

OK. Looks fine to me.

I will be out of the office next week, but will be checking email periodically.

Thanks,

Hans

From: Lo, Michelle (USADC) [mailto:Michelle.Lo2@usdoj.gov]
Sent: Friday, August 02, 2013 4:09 PM
To: Chris Horner; Hans Bader
Cc: Sam Kazman
Subject: RE: CEI v. EPA, 13-0779 (BAH)

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From: chornerlaw@aol.com [mailto:chornerlaw@aol.com]
Sent: Friday, August 02, 2013 2:54 PM
To: Lo, Michelle (USADC); hbader@cei.org
Cc: skazman@cei.org
Subject: RE: CEI v. EPA, 13-0779 (BAH)

Yes I will, am in a mtg 3-5-something but will be able to email I think, cch

Sent from my Verizon Wireless 4G LTE smartphone

"Lo, Michelle (USADC)" wrote:

Dear Chris,

I am waiting to hear back from the EPA regarding your follow-up inquiry below. I am hopeful that I will have a response to you today, but it may not be until around 5 pm due to various individuals' availability. Will you be available then so we can figure out whether we will be filing a dismissal or a proposed briefing schedule at that time?

Thanks,
Michelle

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To: Lo, Michelle (USADC); hbader@cei.org
Cc: skazman@cei.org
Subject: RE: CEI v. EPA, 13-0779 (BAH)

Dear Michelle,

Rather than endless rounds of clarification, though we have only sought one clear statement, I *think* you may just clarified the ambiguity as explained below. But if you plainly state what

is implied we can dismiss.

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I look forward to your reply.

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If what you are asking is – did Ms. McCarthy send ever any text messages that were work-related – I can ask the EPA if it would be willing to respond to this question even though it is well outside the scope of the FOIA request and does not alter the fact that the EPA did not locate any text messages on the 18 specific dates. If the EPA is willing to respond to the question of whether Ms. McCarthy ever sent any text messages that were work-related, can you represent that you will dismiss this case? As much as I think briefing would be an unnecessary use of the Court's and the parties' resources, it may be that we end up having to brief this matter rather than engage in endless rounds of clarification.

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From: Chris Horner [mailto:chornerlaw@aol.com]
Sent: Thursday, August 01, 2013 6:41 PM
To: HBader@cei.org; Lo, Michelle (USADC)

Cc: SKazman@cei.org
Subject: Re: CEI v. EPA, 13-0779 (BAH)

Dera Michelle,

Please consider the following, in addition to what Hans has written you.

EPA's obligation is to *demonstrate* 'no records'. So far they have stated it. Demonstration is found in the bills for her device.

We have obtained what EPA claims to be the relevant (texting) portions of those bills, showing extensive texting activity, so extensive that it is thoroughly implausible that Ms. McCarthy didn't text on those dates.

After we calculated the probability (1 in 7.9 sextillion), we received your statement on EPA's behalf including the portion that is the basis for the ambiguity that Hans refers to and under which we cannot dismiss, but possibly can if you clarify what it is saying:

> Ms. McCarthy uses text messaging to communicate with her family. Ms. McCarthy uses email for government business, and text messaging for family and other personal business. These personal text messages are unrelated to Agency business, and thus were not required to be preserved by the Agency.

To me this plainly implied that EPA's position is that Ms. McCarthy uses email for work and the text messaging function*only* for personal messages, and therefore EPA has not preserved her text messaging. If that is the case, and EPA state it, then the 'no records' response is sufficient and we can, I believe, dismiss.

However, another of us suggested that in context it implies something materially different, that while Ms. McCarthy uses the texting function for EPA business, on the 18 dates at issue in this matter all texts sent or received by Ms. McCarthy were personal, which is why those specific text messages are not preserved. We have not had our stats people run the probability of that but I suggest it is for all practical purposes the same as the idea that she did not text on those 18 dates.

Regardless, it may imply both but we cannot reasonably discern which, and so we ask you to state which is EPA's assertion. This is material because of EPA's obligation to demonstrate, and the sole (and most reasonable) demonstration -- her phone bills -- indicating that one of these readings is implausible, and under that reading therefore so is the 'no records' claim. The other reading is more plausible and makes the 'no records' response plausible.

So, we simply would like clarification of the ambiguous statement: over the period in question, did EPA preserve some of Ms. McCarthy's text messages -- those that someone determined were work-related -- or did they preserve none of them because they were all personal?

If we have a clear answer to this then depending on that clarification we can possibly dismiss, or we know we cannot justify doing so. We also cannot justify doing so in the absence of a clarification of an ambiguous assertion. Clarifying it is of course much simpler than further litigating this if that clarification would enable resolution and dismissal.

But as such, we need it to be a formal representation, in writing.

We look forward to your response.

Best,
Chris Horner

****
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: Hans Bader <HBader@cei.org>
To: Lo, Michelle (USADC) (USADC) <Michelle.Lo2@usdoj.gov>
Cc: Sam Kazman <SKazman@cei.org>; Chris Horner <chornerlaw@aol.com>
Sent: Thu, Aug 1, 2013 11:30 am
Subject: RE: CEI v. EPA, 13-0779 (BAH)

I should note that we have no objection to the proposed briefing schedule you suggested

(EPA's Motion for Summary Judgment September 16, 2013
CEI's Opposition to EPA's Motion for Summary Judgment October 16, 2013
EPA's Reply November 6, 2013).

But, hopefully, we can tie up the loose ends described below in my earlier email, and moot the need for any summary judgment motion (by resolving the case before then).

I will call you in a few minutes to try to get these things squared away.

Thanks,

Hans Bader
CEI

From: Hans Bader
Sent: Wednesday, July 31, 2013 8:25 PM
To: 'Lo, Michelle (USADC)'
Cc: Sam Kazman; Chris Horner
Subject: RE: CEI v. EPA, 13-0779 (BAH)

You are correct that I am only seeking the text messages for 18 specific dates, not the text messages in general. The reason I am asking about the text messages not being preserved in general over that period (July 9, 2009 to June 29, 2012) is just to confirm the apparent reason why the text messages don't exist for those 18 dates. Once this is understood, the query makes sense, to clarify matters and eliminate any ambiguities.

Thanks,

Hans

From: Lo, Michelle (USADC) [mailto:Michelle.Lo2@usdoj.gov]
Sent: Wednesday, July 31, 2013 6:19 PM
To: Hans Bader
Cc: Sam Kazman; Chris Horner
Subject: RE: CEI v. EPA, 13-0779 (BAH)

Dear Hans,

As I stated below and as reflected in the EPA's answer to the complaint, the Agency did not locate any text messages for the 18 dates specified by your FOIA request. As for your question about the preservation of Ms. McCarthy's text messages in general, we are now going well beyond the scope of this FOIA litigation, and I do not believe this is the appropriate forum to address this question.

Thanks,

Michelle

From: Hans Bader [mailto:HBader@cei.org]
Sent: Wednesday, July 31, 2013 4:08 PM
To: Lo, Michelle (USADC)
Cc: Sam Kazman; Chris Horner
Subject: RE: CEI v. EPA, 13-0779 (BAH)

Thanks for the clarifying details. Does this mean that her text messages in general weren't preserved, or just that the agency didn't locate any such messages for the 18 dates specified by the FOIA request? (Just tying up loose ends.)

Thanks,

Hans

From: Lo, Michelle (USADC) [mailto:Michelle.Lo2@usdoj.gov]
Sent: Wednesday, July 31, 2013 3:42 PM
To: Hans Bader
Cc: Sam Kazman; Chris Horner
Subject: RE: CEI v. EPA, 13-0779 (BAH)

Dear Hans,

Thank you for the call just now. To summarize our discussion, I've inquired with the EPA about your question below, and EPA has explained that the Agency did not locate any text messages responsive to your FOIA request at issue in this case. Moreover and in any event, Ms. McCarthy uses text messaging to communicate with her family. Ms. McCarthy uses email for government business, and text messaging for family and other personal business. These personal text messages are unrelated to Agency business, and thus were not required to be preserved by the Agency.

It's my understanding that you will be filing a stipulation of dismissal in this case. I do have one edit, which is to add "with each party to bear its own costs and fees" to the end of the stipulation. I have also made a formatting change to the signature block since my telephone number is changing. If these changes are acceptable to you, you are authorized to file the stipulation on behalf of the parties.

Thanks,
Michelle

Michelle Lo
Assistant United States Attorney
Civil Division
555 4th Street, N.W.
Washington, D.C. 20530
(202) 252-2541 – ***Please note new number***
(202) 514-8780 fax
Michelle.Lo2@usdoj.gov

From: Hans Bader [mailto:HBader@cei.org]
Sent: Monday, July 29, 2013 3:02 PM
To: Lo, Michelle (USADC)
Cc: Sam Kazman; Chris Horner
Subject: RE: CEI v. EPA, 13-0779 (BAH)

One final thing: My colleagues are curious and want an answer to the following question before we

dismiss the case: How can there be no responsive records (as stated by EPA in its no-records response, and echoed in the answer), that is, no text messages, when EPA has elsewhere produced documents to us saying that Ms. McCarthy sent hundreds of text messages using her EPA device (see the attached administrative response by EPA to Chris Horner's FOIA request – the first attached file is EPA's cover letter in response to that request, and the second is its substantive response)? I'd like to get that clarification on that issue before filing the stipulation I sent earlier.

Thanks,

Hans Bader
CEI

From: Hans Bader
Sent: Monday, July 29, 2013 12:17 PM
To: 'Lo, Michelle (USADC)'
Cc: Sam Kazman
Subject: RE: CEI v. EPA, 13-0779 (BAH)

Oops. The draft stipulation I sent in the below email had the wrong docket number on it. That has been fixed in the attached draft stipulation.

From: Hans Bader
Sent: Monday, July 29, 2013 12:11 PM
To: 'Lo, Michelle (USADC)'
Cc: Sam Kazman
Subject: RE: CEI v. EPA, 13-0779 (BAH)

Chris Horner remains very skeptical of the no-records response. Nevertheless, it seems to me that it may not be worth the candle to keep litigating this particular case, as a prudential matter.

Accordingly, plaintiff would be willing to file the attached stipulation of dismissal. If this is acceptable to you, then it can be filed with the court, and it will not be necessary to set a briefing schedule.

Sorry for the delay in responding.

Thank you.

Hans Bader
Competitive Enterprise Institute
(202) 331-2278
hbader@cei.org

From: Lo, Michelle (USADC) [mailto:Michelle.Lo2@usdoj.gov]
Sent: Monday, July 29, 2013 10:11 AM
To: Hans Bader
Subject: RE: CEI v. EPA, 13-0779 (BAH)

Dear Hans:

Per Judge Howell's Standing Order, the parties are to jointly prepare and submit a report indicating whether the agency has made a final determination on compliance with the FOIA request at issue and propose a schedule for the filing of dispositive motions within 14 days after any defendant appears, or by this Friday, August 2. As you know, the EPA issued a "no records" response to CEI's FOIA request on May 31, 2013. Provided CEI intends to proceed with this litigation, we propose the following briefing schedule:

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CEI's Opposition to EPA's Motion for Summary Judgment October 16, 2013
EPA's Reply November 6, 2013

Please let me know if the above proposal is agreeable to you. Thank you.

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(202) 252-2541 – ***Please note new number***
(202) 514-8780 fax
Michelle.Lo2@usdoj.gov

From: Hans Bader [mailto:HBader@cei.org]
Sent: Wednesday, July 17, 2013 6:06 PM
To: Lo, Michelle (USADC)
Subject: RE: CEI v. EPA, 13-0779 (BAH)

I am still waiting to hear back. Sorry about the delay.

From: Lo, Michelle (USADC) [mailto:Michelle.Lo2@usdoj.gov]
Sent: Wednesday, July 17, 2013 6:00 PM
To: Hans Bader
Subject: RE: CEI v. EPA, 13-0779 (BAH)

Hans:

Have you had a chance to discuss with your colleagues whether CEI intends to move forward with this litigation in light of the EPA's no records response?

Thanks,
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From: Lo, Michelle (USADC)
Sent: Thursday, July 11, 2013 4:12 PM
To: Hans Bader <HBader@cei.org> (HBader@cei.org)
Subject: CEI v. EPA, 13-0779 (BAH)

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Attached is the EPA's response to CEI's FOIA request for "copies of all text messages sent by Assistant Administrator for Air and Radiation Gina McCarthy on a mobile telephone provided for her use by the Agency" that I was referring to on our call just now. Please let me know if CEI believes that further litigation of this case will be necessary in light of the EPA's no records response. Thank you.

<< File: Final Response 6005.pdf >>

Michelle Lo
Assistant United States Attorney
Civil Division
555 4th Street, N.W.
Washington, D.C. 20530

(202) 514-5134; (202) 514-8780 fax
Michelle.Lo2@usdoj.gov

From: Kelly, Lynn
To: Minoli, Kevin
Subject: FW: CEI v. EPA, 13-0779 (BAH)
Date: Wednesday, July 31, 2013 4:25:00 PM

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

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<< File: Final Response 6005.pdf >>

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From: Lo, Michelle (USADC)
To: Kelly, Lynn
Subject: FW: CEI v. EPA, 13-0779 (BAH)
Date: Friday, August 02, 2013 5:14:16 PM
Attachments: ecf jt status report.pdf

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However, another of us suggested that in context it implies something materially different, that while Ms. McCarthy uses the texting function for EPA business, on the 18 dates at issue in this matter all texts sent or received by Ms. McCarthy were personal, which is why those specific text messages are not preserved. We have not had our stats people run the probability of that but I suggest it is for all practical purposes the same as the idea that she did not text on those 18 dates.

Regardless, it may imply both but we cannot reasonably discern which, and so we ask you to state which is EPA's assertion. This is material because of EPA's obligation to demonstrate, and the sole (and most reasonable)

demonstration -- her phone bills -- indicating that one of these readings is implausible, and under that reading therefore so is the 'no records' claim. The other reading is more plausible and makes the 'no records' response plausible.

So, we simply would like clarification of the ambiguous statement: over the period in question, did EPA preserve some of Ms. McCarthy's text messages -- those that someone determined were work-related -- or did they preserve none of them because they were all personal?

If we have a clear answer to this then depending on that clarification we can possibly dismiss, or we know we cannot justify doing so. We also cannot justify doing so in the absence of a clarification of an ambiguous assertion. Clarifying it is of course much simpler than further litigating this if that clarification would enable resolution and dismissal.

But as such, we need it to be a formal representation, in writing.

We look forward to your response.

Best,
Chris Horner

****
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: Hans Bader <HBader@cei.org>
To: Lo, Michelle (USADC) (USADC) <Michelle.Lo2@usdoj.gov>
Cc: Sam Kazman <SKazman@cei.org>; Chris Horner <chornerlaw@aol.com>
Sent: Thu, Aug 1, 2013 11:30 am
Subject: RE: CEI v. EPA, 13-0779 (BAH)

I should note that we have no objection to the proposed briefing schedule you suggested

(EPA's Motion for Summary Judgment September 16, 2013
CEI's Opposition to EPA's Motion for Summary Judgment October 16, 2013
EPA's Reply November 6, 2013).

But, hopefully, we can tie up the loose ends described below in my earlier email, and moot the need for any summary judgment motion (by resolving the case before then).

I will call you in a few minutes to try to get these things squared away.

Thanks,

Hans Bader
CEI

From: Hans Bader
Sent: Wednesday, July 31, 2013 8:25 PM
To: 'Lo, Michelle (USADC)'
Cc: Sam Kazman; Chris Horner
Subject: RE: CEI v. EPA, 13-0779 (BAH)

You are correct that I am only seeking the text messages for 18 specific dates, not the text messages in general. The reason I am asking about the text messages not being preserved in general over that period (July 9, 2009 to June 29, 2012) is just to confirm the apparent reason why the text messages don't exist for those 18 dates. Once this is understood, the query makes sense, to clarify matters and eliminate any ambiguities.

Thanks,

Hans

From: Lo, Michelle (USADC) [mailto:Michelle.Lo2@usdoj.gov]
Sent: Wednesday, July 31, 2013 6:19 PM
To: Hans Bader
Cc: Sam Kazman; Chris Horner
Subject: RE: CEI v. EPA, 13-0779 (BAH)

Dear Hans,

As I stated below and as reflected in the EPA's answer to the complaint, the Agency did not locate any text messages for the 18 dates specified by your FOIA request. As for your question about the preservation of Ms. McCarthy's text messages in general, we are now going well beyond the scope of this FOIA litigation, and I do not believe this is the appropriate forum to address this question.

Thanks,
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From: Hans Bader [mailto:HBader@cei.org]
Sent: Wednesday, July 31, 2013 4:08 PM
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Cc: Sam Kazman; Chris Horner
Subject: RE: CEI v. EPA, 13-0779 (BAH)

Thanks for the clarifying details. Does this mean that her text messages in general weren't preserved, or just that the agency didn't locate any such messages for the 18 dates specified by the FOIA request? (Just tying up loose ends.)

Thanks,

Hans

From: Lo, Michelle (USADC) [mailto:Michelle.Lo2@usdoj.gov]
Sent: Wednesday, July 31, 2013 3:42 PM
To: Hans Bader
Cc: Sam Kazman; Chris Horner
Subject: RE: CEI v. EPA, 13-0779 (BAH)

Dear Hans,

Thank you for the call just now. To summarize our discussion, I've inquired with the EPA about your question below, and EPA has explained that the Agency did not locate any text messages responsive to your FOIA request at issue in this case. Moreover and in any event, Ms. McCarthy uses text messaging to communicate with her family. Ms. McCarthy uses email for government business, and text messaging for family and other personal business. These personal text messages are unrelated to Agency business, and thus were not required to be preserved by the Agency.

It's my understanding that you will be filing a stipulation of dismissal in this case. I do have one edit,

which is to add "with each party to bear its own costs and fees" to the end of the stipulation. I have also made a formatting change to the signature block since my telephone number is changing. If these changes are acceptable to you, you are authorized to file the stipulation on behalf of the parties.

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Michelle

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Civil Division
555 4th Street, N.W.
Washington, D.C. 20530
(202) 252-2541 – ***Please note new number***
(202) 514-8780 fax
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From: Hans Bader [mailto:HBader@cei.org]
Sent: Monday, July 29, 2013 3:02 PM
To: Lo, Michelle (USADC)
Cc: Sam Kazman; Chris Horner
Subject: RE: CEI v. EPA, 13-0779 (BAH)

One final thing: My colleagues are curious and want an answer to the following question before we dismiss the case: How can there be no responsive records (as stated by EPA in its no-records response, and echoed in the answer), that is, no text messages, when EPA has elsewhere produced documents to us saying that Ms. McCarthy sent hundreds of text messages using her EPA device (see the attached administrative response by EPA to Chris Horner's FOIA request – the first attached file is EPA's cover letter in response to that request, and the second is its substantive response)? I'd like to get that clarification on that issue before filing the stipulation I sent earlier.

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From: Hans Bader
Sent: Monday, July 29, 2013 12:17 PM
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Cc: Sam Kazman
Subject: RE: CEI v. EPA, 13-0779 (BAH)

Oops. The draft stipulation I sent in the below email had the wrong docket number on it. That has been fixed in the attached draft stipulation.

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Sent: Monday, July 29, 2013 12:11 PM
To: 'Lo, Michelle (USADC)'
Cc: Sam Kazman
Subject: RE: CEI v. EPA, 13-0779 (BAH)

Chris Horner remains very skeptical of the no-records response. Nevertheless, it seems to me that it may not be worth the candle to keep litigating this particular case, as a prudential matter.

Accordingly, plaintiff would be willing to file the attached stipulation of dismissal. If this is acceptable to you, then it can be filed with the court, and it will not be necessary to set a briefing schedule.

Sorry for the delay in responding.

Thank you.

Hans Bader
Competitive Enterprise Institute
(202) 331-2278
hbader@cei.org

From: Lo, Michelle (USADC) [mailto:Michelle.Lo2@usdoj.gov]
Sent: Monday, July 29, 2013 10:11 AM
To: Hans Bader
Subject: RE: CEI v. EPA, 13-0779 (BAH)

Dear Hans:

Per Judge Howell's Standing Order, the parties are to jointly prepare and submit a report indicating whether the agency has made a final determination on compliance with the FOIA request at issue and propose a schedule for the filing of dispositive motions within 14 days after any defendant appears, or by this Friday, August 2. As you know, the EPA issued a "no records" response to CEI's FOIA request on May 31, 2013. Provided CEI intends to proceed with this litigation, we propose the following briefing schedule:

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CEI's Opposition to EPA's Motion for Summary Judgment	October 16, 2013
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Please let me know if the above proposal is agreeable to you. Thank you.

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(202) 252-2541 – ***Please note new number***
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Michelle.Lo2@usdoj.gov

From: Hans Bader [mailto:HBader@cei.org]
Sent: Wednesday, July 17, 2013 6:06 PM
To: Lo, Michelle (USADC)
Subject: RE: CEI v. EPA, 13-0779 (BAH)

I am still waiting to hear back. Sorry about the delay.

From: Lo, Michelle (USADC) [mailto:Michelle.Lo2@usdoj.gov]
Sent: Wednesday, July 17, 2013 6:00 PM
To: Hans Bader
Subject: RE: CEI v. EPA, 13-0779 (BAH)

Hans:

Have you had a chance to discuss with your colleagues whether CEI intends to move forward with this litigation in light of the EPA's no records response?

Thanks,
Michelle

From: Lo, Michelle (USADC)
Sent: Thursday, July 11, 2013 4:12 PM
To: Hans Bader <HBader@cei.org> (HBader@cei.org)
Subject: CEI v. EPA, 13-0779 (BAH)

Hans:

Attached is the EPA's response to CEI's FOIA request for "copies of all text messages sent by Assistant Administrator for Air and Radiation Gina McCarthy on a mobile telephone provided for her use by the Agency" that I was referring to on our call just now. Please let me know if CEI believes that further litigation of this case will be necessary in light of the EPA's no records response. Thank you.

<< File: Final Response 6005.pdf >>

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Assistant United States Attorney
Civil Division
555 4th Street, N.W.
Washington, D.C. 20530
(202) 514-5134; (202) 514-8780 fax
Michelle.Lo2@usdoj.gov

From: Lo, Michelle (USADC)
To: Kelly, Lynn
Subject: FW: CEI v. EPA, 13-0779 (BAH)
Date: Wednesday, July 17, 2013 6:07:32 PM

(b)(5) AWP

From: Hans Bader [mailto:HBader@cei.org]
Sent: Wednesday, July 17, 2013 6:06 PM
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Subject: RE: CEI v. EPA, 13-0779 (BAH)

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Michelle.Lo2@usdoj.gov

From:	Lo, Michelle (USADC)
To:	Kelly, Lynn
Subject:	FW: CEI v. EPA, 13-0779 (BAH)
Date:	Monday, September 09, 2013 3:46:44 PM

From: Lo, Michelle (USADC)
Sent: Monday, September 09, 2013 3:46 PM
To: 'Chris Horner'; 'HBader@cei.org'
Cc: 'SKazman@cei.org'
Subject: RE: CEI v. EPA, 13-0779 (BAH)

Chris,

I was not able to reach you just now, but I did speak with Hans and had a beneficial discussion with him. Although the requested clarification in your August 1 email goes beyond the scope of CEI's FOIA request, which seeks only text messages sent by Ms. McCarthy on the 18 specific dates, the EPA is willing to respond in the interest of reaching an amicable resolution. The agency's position is as follows:

To the very best of her recollection, Ms. McCarthy used the texting function on her EPA phone for personal purposes only and not to conduct Agency business. None of her texts over the period encompassing the 18 specific dates at issue in CEI's FOIA request (July 9, 2009, to June 29, 2012) were preserved.

We believe this should clarify any remaining ambiguity and obviate the need for further litigation. I am of course available to discuss further if you think that would be helpful. I would appreciate it if you can let me know by tomorrow if this resolves all outstanding issues.

Thanks,
Michelle

From: Lo, Michelle (USADC)
Sent: Monday, September 09, 2013 11:28 AM
To: 'Chris Horner'; HBader@cei.org
Cc: SKazman@cei.org
Subject: RE: CEI v. EPA, 13-0779 (BAH)

Yes, I think there is progress on this issue, and it would be helpful for us to have a brief discussion. Please let me know when you are available. Thanks.

From: Chris Horner [mailto:chornerlaw@aol.com]
Sent: Monday, September 09, 2013 11:24 AM
To: Lo, Michelle (USADC); HBader@cei.org
Cc: SKazman@cei.org
Subject: Re: CEI v. EPA, 13-0779 (BAH)

The below is where I think things were when we left off. FYI

From my 8/01 email:

> we have only sought one clear statement, I *think* you may just clarified the ambiguity as explained below. But if you plainly state what is implied we can dismiss.
> Below you more strongly imply what seemed the implication before, but is still not stated outright with no room for misunderstanding. That is that Ms. McCarthy *only* used the texting function on her EPA phone for personal messages; and because she never used it for work this is why EPA has preserved none of her texts.
> If that is what you were saying, would you please confirm that and that this is also EPA's position. In that case, you need not take any further questions to EPA and I accept the 'no records' response as sufficient such that we will dismiss.

Is there any progress on this?

Best,
Chris Horner

-----Original Message-----
From: Lo, Michelle (USADC) (USADC) <Michelle.Lo2@usdoj.gov>
To: Hans Bader <HBader@cei.org>; Chris Horner <chornerlaw@aol.com>
Cc: Sam Kazman <SKazman@cei.org>
Sent: Fri, Aug 16, 2013 1:51 pm
Subject: RE: CEI v. EPA, 13-0779 (BAH)

My apologies for the delay, I am still waiting to hear from EPA. I think there are availability issues due to this being August, but I will get back to you as soon as I can.

From: Hans Bader [mailto:HBader@cei.org]
Sent: Friday, August 16, 2013 1:48 PM
To: Lo, Michelle (USADC); Chris Horner
Cc: Sam Kazman
Subject: RE: CEI v. EPA, 13-0779 (BAH)

Thanks. Hopefully, you will hear soon from EPA (your email below suggested you would hear from EPA by the week of August 5, which has now come and gone).

From: Lo, Michelle (USADC) [mailto:Michelle.Lo2@usdoj.gov]
Sent: Friday, August 02, 2013 4:09 PM
To: Chris Horner; Hans Bader
Cc: Sam Kazman
Subject: RE: CEI v. EPA, 13-0779 (BAH)

Thanks, Chris. It is looking like I will not be able to get a response from the Agency today (due to availability issues), so I think it makes most sense for us to go ahead and file a status report with the proposed briefing schedule so we are in compliance with the Court's standing order. I should hear from EPA by early next week, so we can continue our discussions at that time. If the attached draft report is acceptable, let me know and I can take care of the filing.

From: chornerlaw@aol.com [mailto:chornerlaw@aol.com]
Sent: Friday, August 02, 2013 2:54 PM
To: Lo, Michelle (USADC); hbader@cei.org

Cc: skazman@cei.org
Subject: RE: CEI v. EPA, 13-0779 (BAH)

Yes I will, am in a mtg 3-5-something but will be able to email I think, cch
Sent from my Verizon Wireless 4G LTE smartphone

"Lo, Michelle (USADC)" wrote:
Dear Chris,

I am waiting to hear back from the EPA regarding your follow-up inquiry below. I am hopeful that I will have a response to you today, but it may not be until around 5 pm due to various individuals' availability. Will you be available then so we can figure out whether we will be filing a dismissal or a proposed briefing schedule at that time?

Thanks,
Michelle

From: chornerlaw@aol.com [mailto:chornerlaw@aol.com]
Sent: Thursday, August 01, 2013 10:05 PM
To: Lo, Michelle (USADC); hbader@cei.org
Cc: skazman@cei.org
Subject: RE: CEI v. EPA, 13-0779 (BAH)

Dear Michelle,
Rather than endless rounds of clarification, though we have only sought one clear statement, I *think* you may just clarified the ambiguity as explained below. But if you plainly state what is implied we can dismiss.
Below you more strongly imply what seemed the implication before, but is still not stated outright with no room for misunderstanding. That is that Ms. McCarthy *only* used the texting function on her EPA phone for personal messages; and because she never used it for work this is why EPA has preserved none of her texts.
If that is what you were saying, would you please confirm that and that this is also EPA's position. In that case, you need not take any further questions to EPA and I accept the 'no records' response as sufficient such that we will dismiss.
I look forward to your reply.
Best,
Chris
Sent from my Verizon Wireless 4G LTE smartphone

"Lo, Michelle (USADC)" wrote:
Chris,

I will take your request back to the agency, but I would like to be clear in what I will be communicating to the agency. The Agency has already explained that Ms. McCarthy uses text messaging for family and other personal business, not government business and that, because personal text messages are unrelated to Agency business, they were not required to be preserved by the Agency. I am not sure how you read this statement to mean that Ms. McCarthy uses the texting function for EPA business. As I explained to Hans, this FOIA request deals with text messages on 18 specific dates, and we have already provided a very clear explanation for the "no records" response.

If what you are asking is – did Ms. McCarthy send ever any text messages that were work-related – I can ask the EPA if it would be willing to respond to this question even though it is well outside the scope of the FOIA request and does not alter the fact that the EPA did not locate any text messages on the 18 specific dates. If the EPA is willing to respond to the question of whether Ms. McCarthy ever sent any text messages that were work-related, can you represent that you will dismiss this case? As much as I think briefing would be an unnecessary use of the Court's and the parties' resources, it may be that we end up having to brief this matter rather than engage in endless rounds of clarification.

Best,
Michelle

From: Chris Horner [mailto:chornerlaw@aol.com]
Sent: Thursday, August 01, 2013 6:41 PM
To: HBader@cei.org; Lo, Michelle (USADC)
Cc: SKazman@cei.org
Subject: Re: CEI v. EPA, 13-0779 (BAH)

Dera Michelle,

Please consider the following, in addition to what Hans has written you.

EPA's obligation is to *demonstrate* 'no records'. So far they have stated it. Demonstration is found in the bills for her device.

We have obtained what EPA claims to be the relevant (texting) portions of those bills, showing extensive texting activity, so extensive that it is thoroughly implausible that Ms. McCarthy didn't text on those dates.

After we calculated the probability (1 in 7.9 sextillion), we received your statement on EPA's behalf including the portion that is the basis for the ambiguity that Hans refers to and under which we cannot dismiss, but possibly can if you clarify what it is saying:

> Ms. McCarthy uses text messaging to communicate with her family. Ms. McCarthy uses email for government business, and text messaging for family and other personal business. These personal text messages are unrelated to Agency business, and thus were not required to be preserved by the Agency.

To me this plainly implied that EPA's position is that Ms. McCarthy uses email for work and the text messaging function*only* for personal messages, and therefore EPA has not preserved her text messaging. If that is the case, and EPA state it, then the 'no records' response is sufficient and we can, I believe, dismiss.

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So, we simply would like clarification of the ambiguous statement: over the period in question, did EPA preserve some of Ms. McCarthy's text messages -- those that someone determined were work-related -- or did they

preserve none of them because they were all personal?

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But as such, we need it to be a formal representation, in writing.

We look forward to your response.

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I should note that we have no objection to the proposed briefing schedule you suggested

(EPA's Motion for Summary Judgment September 16, 2013
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But, hopefully, we can tie up the loose ends described below in my earlier email, and moot the need for any summary judgment motion (by resolving the case before then).

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Subject: RE: CEI v. EPA, 13-0779 (BAH)

I am still waiting to hear back. Sorry about the delay.

From: Lo, Michelle (USADC) [mailto:Michelle.Lo2@usdoj.gov]
Sent: Wednesday, July 17, 2013 6:00 PM
To: Hans Bader
Subject: RE: CEI v. EPA, 13-0779 (BAH)

Hans:

Have you had a chance to discuss with your colleagues whether CEI intends to move forward with this litigation in light of the EPA's no records response?

Thanks,
Michelle

From: Lo, Michelle (USADC)
Sent: Thursday, July 11, 2013 4:12 PM

To: Hans Bader <HBader@cei.org> (HBader@cei.org)
Subject: CEI v. EPA, 13-0779 (BAH)

Hans:

Attached is the EPA's response to CEI's FOIA request for "copies of all text messages sent by Assistant Administrator for Air and Radiation Gina McCarthy on a mobile telephone provided for her use by the Agency" that I was referring to on our call just now. Please let me know if CEI believes that further litigation of this case will be necessary in light of the EPA's no records response. Thank you.

<< File: Final Response 6005.pdf >>

Michelle Lo
Assistant United States Attorney
Civil Division
555 4th Street, N.W.
Washington, D.C. 20530
(202) 514-5134; (202) 514-8780 fax
Michelle.Lo2@usdoj.gov

****
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-----Original Message-----
From: Lo, Michelle (USADC) (USADC) <Michelle.Lo2@usdoj.gov>
To: Chris Horner <chornerlaw@aol.com>; HBader <HBader@cei.org>
Cc: SKazman <SKazman@cei.org>
Sent: Mon, Sep 9, 2013 11:20 am
Subject: RE: CEI v. EPA, 13-0779 (BAH)

Chris,

Yes, I just tried to give you a call, but we had a poor connection. Are you able to give me a call at 202-252-2541 at 11:30 am or any time after 1 pm that is convenient for you? I'd like to see if it's possible for us to resolve the outstanding issues, and I think a discussion would be helpful.

Thanks,
Michelle

From: Chris Horner [mailto:chornerlaw@aol.com]
Sent: Monday, September 09, 2013 11:18 AM
To: Lo, Michelle (USADC); HBader@cei.org
Cc: SKazman@cei.org
Subject: Re: CEI v. EPA, 13-0779 (BAH)

Michelle, I just received a call from you but it was cutting in and out then cut off. Are we all on for a call and what is the issue. Let's set a time. Thanks.

Best,
Chris Horner

****
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-----Original Message-----
From: Lo, Michelle (USADC) (USADC) <Michelle.Lo2@usdoj.gov>
To: Hans Bader <HBader@cei.org>; Chris Horner <chornerlaw@aol.com>
Cc: Sam Kazman <SKazman@cei.org>
Sent: Fri, Sep 6, 2013 4:23 pm
Subject: RE: CEI v. EPA, 13-0779 (BAH)

Chris and Hans,

With August behind us, I have finally had a chance to discuss with the EPA and think it would be worthwhile for the parties to have another discussion to determine whether we are able to resolve this case without further litigation. Would either or both of you be available for a telephone call on Monday?

Thanks,
Michelle

From: Lo, Michelle (USADC)
Sent: Friday, August 16, 2013 1:51 PM
To: 'Hans Bader'; Chris Horner
Cc: Sam Kazman
Subject: RE: CEI v. EPA, 13-0779 (BAH)

My apologies for the delay, I am still waiting to hear from EPA. I think there are availability issues due to this being August, but I will get back to you as soon as I can.

From: Hans Bader [mailto:HBader@cei.org]
Sent: Friday, August 16, 2013 1:48 PM
To: Lo, Michelle (USADC); Chris Horner
Cc: Sam Kazman
Subject: RE: CEI v. EPA, 13-0779 (BAH)

Thanks. Hopefully, you will hear soon from EPA (your email below suggested you would hear from EPA by the week of August 5, which has now come and gone).

From: Lo, Michelle (USADC) [mailto:Michelle.Lo2@usdoj.gov]
Sent: Friday, August 02, 2013 4:09 PM
To: Chris Horner; Hans Bader
Cc: Sam Kazman
Subject: RE: CEI v. EPA, 13-0779 (BAH)

Thanks, Chris. It is looking like I will not be able to get a response from the Agency today (due to availability issues), so I think it makes most sense for us to go ahead and file a status report with the proposed briefing schedule so we are in compliance with the Court's standing order. I should hear from EPA by early next week, so we can continue our discussions at that time. If the attached draft report is acceptable, let me know and I can take care of the filing.

From: chornerlaw@aol.com [mailto:chornerlaw@aol.com]
Sent: Friday, August 02, 2013 2:54 PM

To: Lo, Michelle (USADC); hbader@cei.org
Cc: skazman@cei.org
Subject: RE: CEI v. EPA, 13-0779 (BAH)

Yes I will, am in a mtg 3-5-something but will be able to email I think, cch
Sent from my Verizon Wireless 4G LTE smartphone

"Lo, Michelle (USADC)" wrote:
Dear Chris,

I am waiting to hear back from the EPA regarding your follow-up inquiry below. I am hopeful that I will have a response to you today, but it may not be until around 5 pm due to various individuals' availability. Will you be available then so we can figure out whether we will be filing a dismissal or a proposed briefing schedule at that time?

Thanks,
Michelle

From: chornerlaw@aol.com [mailto:chornerlaw@aol.com]
Sent: Thursday, August 01, 2013 10:05 PM
To: Lo, Michelle (USADC); hbader@cei.org
Cc: skazman@cei.org
Subject: RE: CEI v. EPA, 13-0779 (BAH)

Dear Michelle,
Rather than endless rounds of clarification, though we have only sought one clear statement, I *think* you may just clarified the ambiguity as explained below. But if you plainly state what is implied we can dismiss.
Below you more strongly imply what seemed the implication before, but is still not stated outright with no room for misunderstanding. That is that Ms. McCarthy *only* used the texting function on her EPA phone for personal messages; and because she never used it for work this is why EPA has preserved none of her texts.
If that is what you were saying, would you please confirm that and that this is also EPA's position. In that case, you need not take any further questions to EPA and I accept the 'no records' response as sufficient such that we will dismiss.
I look forward to your reply.
Best,
Chris
Sent from my Verizon Wireless 4G LTE smartphone

"Lo, Michelle (USADC)" wrote:
Chris,

I will take your request back to the agency, but I would like to be clear in what I will be communicating to the agency. The Agency has already explained that Ms. McCarthy uses text messaging for family and other personal business, not government business and that, because personal text messages are unrelated to Agency business, they were not required to be preserved by the Agency. I am not sure how you read this statement to mean that Ms. McCarthy uses the texting function for EPA business. As I explained to Hans, this FOIA request deals with text messages on 18 specific dates, and we have already provided a very clear explanation for the "no records" response.

If what you are asking is – did Ms. McCarthy send ever any text messages that were work-related – I can ask the EPA if it would be willing to respond to this question even though it is well outside the scope of

the FOIA request and does not alter the fact that the EPA did not locate any text messages on the 18 specific dates. If the EPA is willing to respond to the question of whether Ms. McCarthy ever sent any text messages that were work-related, can you represent that you will dismiss this case? As much as I think briefing would be an unnecessary use of the Court's and the parties' resources, it may be that we end up having to brief this matter rather than engage in endless rounds of clarification.

Best,
Michelle

From: Chris Horner [mailto:chornerlaw@aol.com]
Sent: Thursday, August 01, 2013 6:41 PM
To: HBader@cei.org; Lo, Michelle (USADC)
Cc: SKazman@cei.org
Subject: Re: CEI v. EPA, 13-0779 (BAH)

Dera Michelle,

Please consider the following, in addition to what Hans has written you.

EPA's obligation is to *demonstrate* 'no records'. So far they have stated it. Demonstration is found in the bills for her device.

We have obtained what EPA claims to be the relevant (texting) portions of those bills, showing extensive texting activity, so extensive that it is thoroughly implausible that Ms. McCarthy didn't text on those dates.

After we calculated the probability (1 in 7.9 sextillion), we received your statement on EPA's behalf including the portion that is the basis for the ambiguity that Hans refers to and under which we cannot dismiss, but possibly can if you clarify what it is saying:

> Ms. McCarthy uses text messaging to communicate with her family. Ms. McCarthy uses email for government business, and text messaging for family and other personal business. These personal text messages are unrelated to Agency business, and thus were not required to be preserved by the Agency.

To me this plainly implied that EPA's position is that Ms. McCarthy uses email for work and the text messaging function*only* for personal messages, and therefore EPA has not preserved her text messaging. If that is the case, and EPA state it, then the 'no records' response is sufficient and we can, I believe, dismiss.

However, another of us suggested that in context it implies something materially different, that while Ms. McCarthy uses the texting function for EPA business, on the 18 dates at issue in this matter all texts sent or received by Ms. McCarthy were personal, which is why those specific text messages are not preserved. We have not had our stats people run the probability of that but I suggest it is for all practical purposes the same as the idea that she did not text on those 18 dates.

Regardless, it may imply both but we cannot reasonably discern which, and so we ask you to state which is EPA's assertion. This is material because of EPA's obligation to demonstrate, and the sole (and most reasonable) demonstration -- her phone bills -- indicating that one of these readings is implausible, and under that reading therefore so is the 'no records' claim. The other reading is more plausible and makes the 'no records' response plausible.

So, we simply would like clarification of the ambiguous statement: over the period in question, did EPA preserve some of Ms. McCarthy's text messages -- those that someone determined were work-related -- or did they preserve none of them because they were all personal?

If we have a clear answer to this then depending on that clarification we can possibly dismiss, or we know we cannot justify doing so. We also cannot justify doing so in the absence of a clarification of an

ambiguous assertion. Clarifying it is of course much simpler than further litigating this if that clarification would enable resolution and dismissal.

But as such, we need it to be a formal representation, in writing.

We look forward to your response.

Best,
Chris Horner

****
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-----Original Message-----
From: Hans Bader <HBader@cei.org>
To: Lo, Michelle (USADC) (USADC) <Michelle.Lo2@usdoj.gov>
Cc: Sam Kazman <SKazman@cei.org>; Chris Horner <chornerlaw@aol.com>
Sent: Thu, Aug 1, 2013 11:30 am
Subject: RE: CEI v. EPA, 13-0779 (BAH)

I should note that we have no objection to the proposed briefing schedule you suggested

(EPA's Motion for Summary Judgment September 16, 2013
CEI's Opposition to EPA's Motion for Summary Judgment October 16, 2013
EPA's Reply November 6, 2013).

But, hopefully, we can tie up the loose ends described below in my earlier email, and moot the need for any summary judgment motion (by resolving the case before then).

I will call you in a few minutes to try to get these things squared away.

Thanks,

Hans Bader
CEI

From: Hans Bader
Sent: Wednesday, July 31, 2013 8:25 PM
To: 'Lo, Michelle (USADC)'
Cc: Sam Kazman; Chris Horner
Subject: RE: CEI v. EPA, 13-0779 (BAH)

You are correct that I am only seeking the text messages for 18 specific dates, not the text messages in general. The reason I am asking about the text messages not being preserved in general over that period (July 9, 2009 to June 29, 2012) is just to confirm the apparent reason why the text messages don't exist for those 18 dates. Once this is understood, the query makes sense, to clarify matters and eliminate any ambiguities.

Thanks,

Hans

From: Lo, Michelle (USADC) [mailto:Michelle.Lo2@usdoj.gov]
Sent: Wednesday, July 31, 2013 6:19 PM
To: Hans Bader
Cc: Sam Kazman; Chris Horner
Subject: RE: CEI v. EPA, 13-0779 (BAH)

Dear Hans,

As I stated below and as reflected in the EPA's answer to the complaint, the Agency did not locate any text messages for the 18 dates specified by your FOIA request. As for your question about the preservation of Ms. McCarthy's text messages in general, we are now going well beyond the scope of this FOIA litigation, and I do not believe this is the appropriate forum to address this question.

Thanks,
Michelle

From: Hans Bader [mailto:HBader@cei.org]
Sent: Wednesday, July 31, 2013 4:08 PM
To: Lo, Michelle (USADC)
Cc: Sam Kazman; Chris Horner
Subject: RE: CEI v. EPA, 13-0779 (BAH)

Thanks for the clarifying details. Does this mean that her text messages in general weren't preserved, or just that the agency didn't locate any such messages for the 18 dates specified by the FOIA request? (Just tying up loose ends.)

Thanks,

Hans

From: Lo, Michelle (USADC) [mailto:Michelle.Lo2@usdoj.gov]
Sent: Wednesday, July 31, 2013 3:42 PM
To: Hans Bader
Cc: Sam Kazman; Chris Horner
Subject: RE: CEI v. EPA, 13-0779 (BAH)

Dear Hans,

Thank you for the call just now. To summarize our discussion, I've inquired with the EPA about your question below, and EPA has explained that the Agency did not locate any text messages responsive to your FOIA request at issue in this case. Moreover and in any event, Ms. McCarthy uses text messaging to communicate with her family. Ms. McCarthy uses email for government business, and text messaging for family and other personal business. These personal text messages are unrelated to Agency business, and thus were not required to be preserved by the Agency.

It's my understanding that you will be filing a stipulation of dismissal in this case. I do have one edit, which is to add "with each party to bear its own costs and fees" to the end of the stipulation. I have also made a formatting change to the signature block since my telephone number is changing. If these changes are acceptable to you, you are authorized to file the stipulation on behalf of the parties.

Thanks,
Michelle

Michelle Lo
Assistant United States Attorney
Civil Division

555 4th Street, N.W.
Washington, D.C. 20530
(202) 252-2541 – ***Please note new number***
(202) 514-8780 fax
Michelle.Lo2@usdoj.gov

From: Hans Bader [mailto:HBader@cei.org]
Sent: Monday, July 29, 2013 3:02 PM
To: Lo, Michelle (USADC)
Cc: Sam Kazman; Chris Horner
Subject: RE: CEI v. EPA, 13-0779 (BAH)

One final thing: My colleagues are curious and want an answer to the following question before we dismiss the case: How can there be no responsive records (as stated by EPA in its no-records response, and echoed in the answer), that is, no text messages, when EPA has elsewhere produced documents to us saying that Ms. McCarthy sent hundreds of text messages using her EPA device (see the attached administrative response by EPA to Chris Horner's FOIA request – the first attached file is EPA's cover letter in response to that request, and the second is its substantive response)? I'd like to get that clarification on that issue before filing the stipulation I sent earlier.

Thanks,

Hans Bader
CEI

From: Hans Bader
Sent: Monday, July 29, 2013 12:17 PM
To: 'Lo, Michelle (USADC)'
Cc: Sam Kazman
Subject: RE: CEI v. EPA, 13-0779 (BAH)

Oops. The draft stipulation I sent in the below email had the wrong docket number on it. That has been fixed in the attached draft stipulation.

From: Hans Bader
Sent: Monday, July 29, 2013 12:11 PM
To: 'Lo, Michelle (USADC)'
Cc: Sam Kazman
Subject: RE: CEI v. EPA, 13-0779 (BAH)

Chris Horner remains very skeptical of the no-records response. Nevertheless, it seems to me that it may not be worth the candle to keep litigating this particular case, as a prudential matter.

Accordingly, plaintiff would be willing to file the attached stipulation of dismissal. If this is acceptable to you, then it can be filed with the court, and it will not be necessary to set a briefing schedule.

Sorry for the delay in responding.

Thank you.

Hans Bader
Competitive Enterprise Institute
(202) 331-2278
hbader@cei.org

From: Lo, Michelle (USADC) [mailto:Michelle.Lo2@usdoj.gov]
Sent: Monday, July 29, 2013 10:11 AM
To: Hans Bader
Subject: RE: CEI v. EPA, 13-0779 (BAH)

Dear Hans:

Per Judge Howell's Standing Order, the parties are to jointly prepare and submit a report indicating whether the agency has made a final determination on compliance with the FOIA request at issue and propose a schedule for the filing of dispositive motions within 14 days after any defendant appears, or by this Friday, August 2. As you know, the EPA issued a "no records" response to CEI's FOIA request on May 31, 2013. Provided CEI intends to proceed with this litigation, we propose the following briefing schedule:

EPA's Motion for Summary Judgment	September 16, 2013
CEI's Opposition to EPA's Motion for Summary Judgment	October 16, 2013
EPA's Reply	November 6, 2013

Please let me know if the above proposal is agreeable to you. Thank you.

Michelle Lo
Assistant United States Attorney
Civil Division
555 4th Street, N.W.
Washington, D.C. 20530
(202) 252-2541 – ***Please note new number***
(202) 514-8780 fax
Michelle.Lo2@usdoj.gov

From: Hans Bader [mailto:HBader@cei.org]
Sent: Wednesday, July 17, 2013 6:06 PM
To: Lo, Michelle (USADC)
Subject: RE: CEI v. EPA, 13-0779 (BAH)

I am still waiting to hear back. Sorry about the delay.

From: Lo, Michelle (USADC) [mailto:Michelle.Lo2@usdoj.gov]
Sent: Wednesday, July 17, 2013 6:00 PM
To: Hans Bader
Subject: RE: CEI v. EPA, 13-0779 (BAH)

Hans:

Have you had a chance to discuss with your colleagues whether CEI intends to move forward with this litigation in light of the EPA's no records response?

Thanks,
Michelle

From: Lo, Michelle (USADC)
Sent: Thursday, July 11, 2013 4:12 PM
To: Hans Bader <HBader@cei.org> (HBader@cei.org)
Subject: CEI v. EPA, 13-0779 (BAH)

Hans:

Attached is the EPA's response to CEI's FOIA request for "copies of all text messages sent by Assistant Administrator for Air and Radiation Gina McCarthy on a mobile telephone provided for her use by the Agency" that I was referring to on our call just now. Please let me know if CEI believes that further litigation of this case will be necessary in light of the EPA's no records response. Thank you.

<< File: Final Response 6005.pdf >>

Michelle Lo
Assistant United States Attorney
Civil Division
555 4th Street, N.W.
Washington, D.C. 20530
(202) 514-5134; (202) 514-8780 fax
Michelle.Lo2@usdoj.gov

From: Anderson, Cindy
To: Miller, Kevin
Cc: Minoli, Kevin; Kelly, Lynn
Subject: FW: CEI v. EPA, CA No. 13-1074
Date: Monday, September 16, 2013 11:31:06 AM
Attachments: 202-596-0247 - Message Detail - Jul 5 2011 Invoice.xlsx (b) (5) DPP, (b) (5) ACP, (b) (5) AWP
Importance: High

Kevin & Kevin (& Lynn)

(b) (5) DPP, (b) (5) ACP, (b) (5) AWP [redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

Cindy
564-2690

From: Chris Horner [mailto:CHorner@cei.org]
Sent: Monday, September 16, 2013 10:38 AM
To: Nebeker, Mark (USADC)
Cc: Anderson, Cindy
Subject: RE: CEI v. EPA, CA No. 13-1074

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:
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: Kelly, Lynn
To: Lo, Michelle (USADC)
Subject: FW: Case dismissed pursuant to stipulation you sent Tuesday RE: CEI v. EPA, 13-0779 (BAH)
Date: Friday, September 13, 2013 12:37:00 PM

(b) (5) DPP, (b) (5) ACP, (b) (5) AWP [redacted]

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: Minoli, Kevin
Sent: Friday, September 13, 2013 12:30 PM
To: Kelly, Lynn; Miller, Kevin
Cc: McDermott, Marna; Albright, Scott
Subject: RE: Case dismissed pursuant to stipulation you sent Tuesday RE: CEI v. EPA, 13-0779 (BAH)

(b) (5) DPP, (b) (5) ACP, (b) (5) AWP [redacted]

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

-----Original Message-----
From: Kelly, Lynn
Sent: Friday, September 13, 2013 12:28 PM
To: Minoli, Kevin; Miller, Kevin
Cc: McDermott, Marna; Albright, Scott
Subject: FW: Case dismissed pursuant to stipulation you sent Tuesday RE: CEI v. EPA, 13-0779 (BAH)

(b) (5) DPP, (b) (5) ACP, (b) (5) AWP [redacted]

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.

-----Original Message-----
From: Lo, Michelle (USADC) [mailto:Michelle.Lo2@usdoj.gov]
Sent: Friday, September 13, 2013 12:13 PM
To: Kelly, Lynn
Subject: FW: Case dismissed pursuant to stipulation you sent Tuesday RE: CEI v. EPA, 13-0779 (BAH)

Lynn: (b)(5) AWP [redacted] Thanks.

-----Original Message-----
From: Hans Bader [mailto:HBader@cei.org]
Sent: Friday, September 13, 2013 11:21 AM
To: Lo, Michelle (USADC)
Cc: Chris Horner; Sam Kazman
Subject: Case dismissed pursuant to stipulation you sent Tuesday RE: CEI v. EPA, 13-0779 (BAH)

OK. I have filed the stipulation you drafted and sent on Tuesday. It is attached.

(I changed the dates from September 10 to September 13 as in the certificate of service, but otherwise, it is exactly as you sent it).

Have a nice weekend.

-----Original Message-----
From: Lo, Michelle (USADC) [mailto:Michelle.Lo2@usdoj.gov]
Sent: Thursday, September 12, 2013 5:50 PM
To: Hans Bader
Cc: Chris Horner; Sam Kazman
Subject: Re: CEI v. EPA, 13-0779 (BAH)

I am glad that we have been able to have productive discussions to resolve this matter, and I look forward to continuing our amicable relationship in any future cases. However, this is not the first time that I have understood the parties to have reached an agreement on the terms of the dismissal, only to learn of another change that you require. I think this should be a straightforward dismissal; the publicly filed answer already explains the no records response, so I do not believe the additional sentence is necessary. I am available to discuss if you would like.

On Sep 12, 2013, at 5:10 PM, "Hans Bader"
<HBader@cei.org<mailto:HBader@cei.org>> wrote:

Here is the attached file I meant to send. (It fixes the date to tomorrow's date from September 10. it also corrects inconsistent capitalization of "Plaintiff" and "Defendant" in the version I sent you at 5:04 p.m. and substitutes "Plaintiff" for the word "CEI" to be consistent). Sorry about that!

Thanks,

Hans Bader
202-331-2278

From: Hans Bader
Sent: Thursday, September 12, 2013 5:04 PM
To: 'Lo, Michelle (USADC)'; Chris Horner
Cc: Sam Kazman

Subject: RE: CEI v. EPA, 13-0779 (BAH)

Would you object to us filing the stipulation of dismissal, with the addition of a recital of what you told us to explain why we are dismissing, to wit, adding the following sentence memorializing what you told us earlier:

Plaintiff agrees to do so because it has been advised by defendant that there are no responsive records, in light of the fact that (1) to the best of her recollection, Ms. McCarthy used the texting function on her EPA phone for personal purposes only and not to conduct Agency business; and (2) none of her texts over the period encompassing the 18 specific dates at issue in plaintiff's FOIA request (July 9, 2009, to June 29,
2012) were preserved.
We would be pleased to file such a stipulation of dismissal. (With the recital added, it is attached).

Thanks,

Hans

From: Lo, Michelle (USADC)
[mailto:Michelle.Lo2@usdoj.gov]<mailto:[mailto:Michelle.Lo2@usdoj.gov]>
Sent: Tuesday, September 10, 2013 12:22 PM
To: Hans Bader; Chris Horner
Cc: Sam Kazman
Subject: RE: CEI v. EPA, 13-0779 (BAH)

Thank you. We had exchanged a draft stipulation of dismissal at the time our discussions began, so I'm attaching it here with a revision to my new phone number. I'll look out for the filing of the stipulation in a day or two.

Michelle Lo
Assistant United States Attorney
Civil Division
555 4th Street, N.W.
Washington, D.C. 20530
(202) 252-2541 - Please note new number
(202) 514-8780 fax
Michelle.Lo2@usdoj.gov<mailto:Michelle.Lo2@usdoj.gov>

From: Hans Bader [mailto:HBader@cei.org]<mailto:[mailto:HBader@cei.org]>
Sent: Tuesday, September 10, 2013 12:17 PM
To: Lo, Michelle (USADC); Chris Horner
Cc: Sam Kazman
Subject: RE: CEI v. EPA, 13-0779 (BAH)

OK. We will dismiss (I am busy writing a brief in another case, but will be done with that in a day or two, and can execute a dismissal notice then).

From: Lo, Michelle (USADC) [mailto:Michelle.Lo2@usdoj.gov]
Sent: Tuesday, September 10, 2013 12:14 PM
To: Chris Horner
Cc: Hans Bader; Sam Kazman
Subject: RE: CEI v. EPA, 13-0779 (BAH)

If you could please let me know by this afternoon whether you will be dismissing this case, I would appreciate it. Under the current schedule, our opening brief is due on Monday, September 16, so we will need to plan accordingly since Judge Howell requires any extension motions to be filed at least four days prior to the deadline.

From: Chris Horner

[mailto:chornerlaw@aol.com]<mailto:[mailto:chornerlaw@aol.com]>
Sent: Monday, September 09, 2013 4:43 PM
To: Lo, Michelle (USADC)
Cc: HBader@cei.org<mailto:HBader@cei.org>;
SKazman@cei.org<mailto:SKazman@cei.org>
Subject: Re: CEI v. EPA, 13-0779 (BAH)

Ok. Thank you.

Sent from my iPhone

On Sep 9, 2013, at 4:37 PM, "Lo, Michelle (USADC)"
<Michelle.Lo2@usdoj.gov<mailto:Michelle.Lo2@usdoj.gov>> wrote:
I had hoped to avoid this very problem, which is why I thought it would be productive for us to discuss over the phone. I don't think there is any ambiguity in my emails, but, yes, I can confirm again that I am saying the approximately three-year period from July 9, 2009 to June 29, 2012.

Thanks,
Michelle

From: Chris Horner [mailto:chornerlaw@aol.com]
Sent: Monday, September 09, 2013 4:21 PM
To: Lo, Michelle (USADC); HBader@cei.org<mailto:HBader@cei.org>
Cc: SKazman@cei.org<mailto:SKazman@cei.org>
Subject: Re: CEI v. EPA, 13-0779 (BAH)

I'm sorry but I keep reading two meanings in most of these messages.
Please confirm you are saying the approximately three-year period from July 9, 2009 to June 29, 2012?

Best,
Chris Horner
****
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: Lo, Michelle (USADC) (USADC)
<Michelle.Lo2@usdoj.gov<mailto:Michelle.Lo2@usdoj.gov>>
To: Hans Bader <HBader@cei.org<mailto:HBader@cei.org>>; Chris Horner <chornerlaw@aol.com<mailto:chornerlaw@aol.com>>
Cc: Sam Kazman <SKazman@cei.org<mailto:SKazman@cei.org>>
Sent: Mon, Sep 9, 2013 4:17 pm
Subject: RE: CEI v. EPA, 13-0779 (BAH)
Yes, I mean all the dates between the period from July 9, 2009, to June 29, 2012.

From: Hans Bader [mailto:HBader@cei.org<mailto:HBader@cei.org?>]
Sent: Monday, September 09, 2013 3:51 PM
To: Lo, Michelle (USADC); Chris Horner
Cc: Sam Kazman
Subject: RE: CEI v. EPA, 13-0779 (BAH)

Thanks. By "encompassing," you mean not just the 18 dates, but also the interstitial dates between them, right? (When we spoke over the phone, I did not think in detail over what was meant by the words "entire period" when you said at that time, "none of her texts over the entire period . . .", although this is still helpful). Thanks.

From: Lo, Michelle (USADC) [mailto:Michelle.Lo2@usdoj.gov]

Sent: Monday, September 9, 2013 3:46 PM
To: Chris Horner; Hans Bader
Cc: Sam Kazman
Subject: RE: CEI v. EPA, 13-0779 (BAH)

Chris,

I was not able to reach you just now, but I did speak with Hans and had a beneficial discussion with him. Although the requested clarification in your August 1 email goes beyond the scope of CEI's FOIA request, which seeks only text messages sent by Ms. McCarthy on the 18 specific dates, the EPA is willing to respond in the interest of reaching an amicable resolution. The agency's position is as follows:

To the very best of her recollection, Ms. McCarthy used the texting function on her EPA phone for personal purposes only and not to conduct Agency business. None of her texts over the period encompassing the 18 specific dates at issue in CEI's FOIA request (July 9, 2009, to June 29, 2012) were preserved.

We believe this should clarify any remaining ambiguity and obviate the need for further litigation. I am of course available to discuss further if you think that would be helpful. I would appreciate it if you can let me know by tomorrow if this resolves all outstanding issues.

Thanks,
Michelle

From: Lo, Michelle (USADC)
Sent: Monday, September 09, 2013 11:28 AM
To: 'Chris Horner'; HBader@cei.org<mailto:HBader@cei.org>
Cc: SKazman@cei.org<mailto:SKazman@cei.org>
Subject: RE: CEI v. EPA, 13-0779 (BAH)

Yes, I think there is progress on this issue, and it would be helpful for us to have a brief discussion. Please let me know when you are available. Thanks.

From: Chris Horner [mailto:chornerlaw@aol.com]
Sent: Monday, September 09, 2013 11:24 AM
To: Lo, Michelle (USADC); HBader@cei.org<mailto:HBader@cei.org>
Cc: SKazman@cei.org<mailto:SKazman@cei.org>
Subject: Re: CEI v. EPA, 13-0779 (BAH)

The below is where I think things were when we left off. FYI

From my 8/01 email:

we have only sought one clear statement, I *think* you may just clarified the ambiguity as explained below. But if you plainly state what is implied we can dismiss.
Below you more strongly imply what seemed the implication before, but is still not stated outright with no room for misunderstanding. That is that Ms. McCarthy *only* used the texting function on her EPA phone for personal messages; and because she never used it for work this is why EPA has preserved none of her texts.
If that is what you were saying, would you please confirm that and that this is also EPA's position. In that case, you need not take any further questions to EPA and I accept the 'no records' response as sufficient such that we will dismiss.

Is there any progress on this?

Best,
Chris Horner

-----Original Message-----
From: Lo, Michelle (USADC) (USADC)
<Michelle.Lo2@usdoj.gov<mailto:Michelle.Lo2@usdoj.gov>>
To: Hans Bader <HBader@cei.org<mailto:HBader@cei.org>>; Chris Horner
<chornerlaw@aol.com<mailto:chornerlaw@aol.com>>
Cc: Sam Kazman <SKazman@cei.org<mailto:SKazman@cei.org>>
Sent: Fri, Aug 16, 2013 1:51 pm
Subject: RE: CEI v. EPA, 13-0779 (BAH)
My apologies for the delay, I am still waiting to hear from EPA. I think there are availability issues due to this being August, but I will get back to you as soon as I can.

From: Hans Bader [mailto:HBader@cei.org<mailto:HBader@cei.org?>]
Sent: Friday, August 16, 2013 1:48 PM
To: Lo, Michelle (USADC); Chris Horner
Cc: Sam Kazman
Subject: RE: CEI v. EPA, 13-0779 (BAH)

Thanks. Hopefully, you will hear soon from EPA (your email below suggested you would hear from EPA by the week of August 5, which has now come and gone).

From: Lo, Michelle (USADC) [mailto:Michelle.Lo2@usdoj.gov]
Sent: Friday, August 02, 2013 4:09 PM
To: Chris Horner; Hans Bader
Cc: Sam Kazman
Subject: RE: CEI v. EPA, 13-0779 (BAH)

Thanks, Chris. It is looking like I will not be able to get a response from the Agency today (due to availability issues), so I think it makes most sense for us to go ahead and file a status report with the proposed briefing schedule so we are in compliance with the Court's standing order. I should hear from EPA by early next week, so we can continue our discussions at that time. If the attached draft report is acceptable, let me know and I can take care of the filing.

From: chornerlaw@aol.com<mailto:chornerlaw@aol.com>
[mailto:chornerlaw@aol.com]
Sent: Friday, August 02, 2013 2:54 PM
To: Lo, Michelle (USADC); hbader@cei.org<mailto:hbader@cei.org>
Cc: skazman@cei.org<mailto:skazman@cei.org>
Subject: RE: CEI v. EPA, 13-0779 (BAH)

Yes I will, am in a mtg 3-5-something but will be able to email I think, cch Sent from my Verizon Wireless 4G LTE smartphone

"Lo, Michelle (USADC)" wrote:
Dear Chris,

I am waiting to hear back from the EPA regarding your follow-up inquiry below. I am hopeful that I will have a response to you today, but it may not be until around 5 pm due to various individuals' availability.
Will you be available then so we can figure out whether we will be filing a dismissal or a proposed briefing schedule at that time?

Thanks,
Michelle

From: chornerlaw@aol.com<mailto:chornerlaw@aol.com>

[mailto:chornerlaw@aol.com]
Sent: Thursday, August 01, 2013 10:05 PM
To: Lo, Michelle (USADC); hbader@cei.org<mailto:hbader@cei.org>
Cc: skazman@cei.org<mailto:skazman@cei.org>
Subject: RE: CEI v. EPA, 13-0779 (BAH)

Dear Michelle,
Rather than endless rounds of clarification, though we have only sought one clear statement, I *think* you may just clarified the ambiguity as explained below. But if you plainly state what is implied we can dismiss.
Below you more strongly imply what seemed the implication before, but is still not stated outright with no room for misunderstanding. That is that Ms. McCarthy *only* used the texting function on her EPA phone for personal messages; and because she never used it for work this is why EPA has preserved none of her texts.
If that is what you were saying, would you please confirm that and that this is also EPA's position. In that case, you need not take any further questions to EPA and I accept the 'no records' response as sufficient such that we will dismiss.
I look forward to your reply.
Best,
Chris
Sent from my Verizon Wireless 4G LTE smartphone

"Lo, Michelle (USADC)" wrote:
Chris,

I will take your request back to the agency, but I would like to be clear in what I will be communicating to the agency. The Agency has already explained that Ms. McCarthy uses text messaging for family and other personal business, not government business and that, because personal text messages are unrelated to Agency business, they were not required to be preserved by the Agency. I am not sure how you read this statement to mean that Ms. McCarthy uses the texting function for EPA business. As I explained to Hans, this FOIA request deals with text messages on 18 specific dates, and we have already provided a very clear explanation for the "no records" response.

If what you are asking is - did Ms. McCarthy send ever any text messages that were work-related - I can ask the EPA if it would be willing to respond to this question even though it is well outside the scope of the FOIA request and does not alter the fact that the EPA did not locate any text messages on the 18 specific dates. If the EPA is willing to respond to the question of whether Ms. McCarthy ever sent any text messages that were work-related, can you represent that you will dismiss this case? As much as I think briefing would be an unnecessary use of the Court's and the parties' resources, it may be that we end up having to brief this matter rather than engage in endless rounds of clarification.

Best,
Michelle

From: Chris Horner [mailto:chornerlaw@aol.com]
Sent: Thursday, August 01, 2013 6:41 PM
To: HBader@cei.org<mailto:HBader@cei.org>; Lo, Michelle (USADC)
Cc: SKazman@cei.org<mailto:SKazman@cei.org>
Subject: Re: CEI v. EPA, 13-0779 (BAH)

Dera Michelle,

Please consider the following, in addition to what Hans has written you.

EPA's obligation is to demonstrate 'no records'. So far they have stated it. Demonstration is found in the bills for her device.

We have obtained what EPA claims to be the relevant (texting) portions of those bills, showing extensive texting

activity, so extensive that it is thoroughly implausible that Ms. McCarthy didn't text on those dates.

After we calculated the probability (1 in 7.9 sextillion), we received your statement on EPA's behalf including the portion that is the basis for the ambiguity that Hans refers to and under which we cannot dismiss, but possibly can if you clarify what it is saying:

Ms. McCarthy uses text messaging to communicate with her family. Ms.
McCarthy uses email for government business, and text messaging for family and other personal business. These personal text messages are unrelated to Agency business, and thus were not required to be preserved by the Agency.
<CEI v EPA No 13-779 draft Stipulation of Dismissal with recital fixed by CEI.doc>

From:	Kelly, Lynn
To:	Margolis, Alan
Subject:	FW: Competitive Enterprise Institute v. United States Environmental Protection Agency 1:13cv1532 D. DC
Date:	Wednesday, October 23, 2013 11:25:00 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

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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:	Kelly, Lynn
To:	Braswell, Marina (USADC)
Subject:	FW: Competitive Enterprise Institute v. United States Environmental Protection Agency 1:13cv1532 D. DC
Date:	Friday, October 18, 2013 9:09:00 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

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Hi Marina,

(b) (5) DPP, (b) (5) ACP, (b) (5) AWP [redacted]

Look forward to touching base when you get a chance. Thanks!

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:	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 4:02:00 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:	Kelly, Lynn
To:	Newton, Jonathan
Cc:	Wachter, Eric
Subject:	FW: Competitive Enterprise Institute v. United States Environmental Protection Agency 1:13cv1532 D. DC
Date:	Thursday, October 17, 2013 1:02:00 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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(b) (5) DPP, (b) (5) ACP, (b) (5) AWP [redacted]

[redacted]

[redacted]

[redacted]

[redacted]

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: Kelly, Lynn
To: Minoli, Kevin
Subject: FW: Due date for text bill FOIA
Date: Tuesday, July 16, 2013 10:34:00 AM
Attachments: Orignial text request letter 6005 .pdf
Final Response request for text EPA 6005.pdf
Horner (McCarthy Phone Bills) Rqst.pdf
Horner CEI Acknowledgement Ltr .docx
Fee Waiver phone bill 006937.pdf
request for clarification.phone bills.pdf
Response to request for claification.doc
Personal Text Request Letter 6939.pdf
Personal Text request Final Response 6939.pdf
202-596-0247 - Text bill - Jul 09-Jun 12.xlsx (b) (5) DPP, (b) (5) ACP, (b) (5) AWP

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

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From: Weinstock, Larry
Sent: Tuesday, July 16, 2013 10:09 AM
To: Minoli, Kevin; Kelly, Lynn; Ketcham-Colwill, Nancy; Miller, Kevin
Subject: RE: Due date for text bill FOIA

This is what I have in response to your request:

1. The response to the original request for texts on 18 specific days (number 6005)

2. Our final response

3. The request for the phone bill (6937)

4. The acknowledgment letter from the FOIA Office

5. The fee waiver from the FOIA office

6. The request for clarification on phone or text bills

7. His response to the request for clarification

I am also including:

8. His second request for texts on personal devices (6939)

9. Our final response

10. The texting bill - (b) (5) DPP, (b) (5) ACP

Hope this helps
Larry

From:	Albright, Scott
To:	Kelly, Lynn
Subject:	FW: GLO litigation deadlines
Date:	Tuesday, September 24, 2013 4:15:12 PM
Attachments:	GLO litigation deadlines as of 9 24 13.docx (b) (5) DPP, (b) (5) ACP, (b) (5) AWP

Lynn – take a look at the attached ASAP. Is there anything that you're covering that's missing?

Thanks,

Scott Albright
U.S. EPA
Office of General Counsel
Information Law Practice Group
(202) 564-2884

From: Albright, Scott
Sent: Tuesday, September 24, 2013 3:44 PM
To: Miller, Kevin
Subject: GLO litigation deadlines

see attached – will bring a hard copy as well.

Scott Albright
U.S. EPA
Office of General Counsel
Information Law Practice Group
(202) 564-2884

From:	Weinstock, Larry
To:	Kelly, Lynn
Subject:	FW: Misdirected Request HQ-2013-006005
Date:	Thursday, May 30, 2013 12:29:24 PM

From: Newton, Jonathan
Sent: Tuesday, May 21, 2013 5:10 PM
To: Weinstock, Larry
Subject: RE: Misdirected Request HQ-2013-006005

To my understanding, OEI's FOI contact in Shavonne Simms. I copied her on my initial message to Sabrina Hamilton.

From: Weinstock, Larry
Sent: Tuesday, May 21, 2013 4:28 PM
To: Newton, Jonathan
Subject: FW: Misdirected Request HQ-2013-006005

Jonathan,

Sabrina's out for a week, can you tell me who is the OEI contact for OEI. It is my understanding that they got an earlier FOIA on text messages.

Thanks
Larry

From: Hamilton, Sabrina
Sent: Tuesday, May 21, 2013 2:25 PM
To: Weinstock, Larry
Cc: Ketcham-Colwill, Nancy; Hammond, Gloria; Faulkner, Martha
Subject: RE: Misdirected Request HQ-2013-006005

Sorry,

I forgot to attach the summary page for you.

Sabrina

From: Hamilton, Sabrina
Sent: Tuesday, May 21, 2013 2:22 PM
To: Weinstock, Larry
Cc: Ketcham-Colwill, Nancy; Hammond, Gloria; Faulkner, Martha
Subject: FW: Misdirected Request HQ-2013-006005

Larry,

This is being assigned to you in FOIAonline for coordination with Larry Dollison. Let me know if I

should task the assignment to another office or if OEI should be the lead. Thanks

Sabrina

From: Newton, Jonathan
Sent: Tuesday, May 21, 2013 9:33 AM
To: Hamilton, Sabrina
Cc: Simms, Shavonne
Subject: Misdirected Request HQ-2013-006005

Hi Sabrina,

Sorry for the delay; this request (seeking Gina McCarthy's text messages) should go to either OAR or OEI. (b)(5) DPP [redacted]

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: Ketcham-Colwill, Nancy
To: Kelly, Lynn
Subject: FW: Misdirected Request HQ-2013-006005
Date: Wednesday, May 29, 2013 8:27:29 PM

Sorry for delay in sending this. Please follow up with Larry. Thanks.

From: Weinstock, Larry
Sent: Tuesday, May 21, 2013 2:45 PM
To: Ketcham-Colwill, Nancy
Subject: RE: Misdirected Request HQ-2013-006005

(b) (5) DPP, (b) (5) ACP [redacted]

(b) (5) DPP, (b) (5) ACP

[redacted]

Larry

From: Weinstock, Larry
Sent: Tuesday, May 21, 2013 2:41 PM
To: Ketcham-Colwill, Nancy
Subject: FW: Misdirected Request HQ-2013-006005

(b) (5) DPP, (b) (5) ACP [redacted] ?

Larry

From: Hamilton, Sabrina
Sent: Tuesday, May 21, 2013 2:25 PM
To: Weinstock, Larry
Cc: Ketcham-Colwill, Nancy; Hammond, Gloria; Faulkner, Martha
Subject: RE: Misdirected Request HQ-2013-006005

Sorry,

I forgot to attach the summary page for you.

Sabrina

From: Hamilton, Sabrina
Sent: Tuesday, May 21, 2013 2:22 PM
To: Weinstock, Larry
Cc: Ketcham-Colwill, Nancy; Hammond, Gloria; Faulkner, Martha
Subject: FW: Misdirected Request HQ-2013-006005

Larry,

This is being assigned to you in FOIAonline for coordination with Larry Dollison. Let me know if I should task the assignment to another office or if OEI should be the lead. Thanks

Sabrina

From: Newton, Jonathan
Sent: Tuesday, May 21, 2013 9:33 AM
To: Hamilton, Sabrina
Cc: Simms, Shavonne
Subject: Misdirected Request HQ-2013-006005

Hi Sabrina,

Sorry for the delay; this request (seeking Gina McCarthy's text messages) should go to either OAR or

OEI. If there are any responsive records they would be in one of those locations.

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: Kelly, Lynn
To: Weinstock, Larry
Subject: FW: Misdirected Request HQ-2013-006005
Date: Wednesday, May 29, 2013 5:58:00 PM
Attachments: Response Letter (sametime).docx

Hi Larry,

(b) (5) DPP, (b) (5) ACP, (b) (5) AWP [redacted] Thanks!

From: McDermott, Marna
Sent: Wednesday, May 29, 2013 4:24 PM
To: Kelly, Lynn
Subject: FW: Misdirected Request HQ-2013-006005

fyi

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

From: McDermott, Marna
Sent: Thursday, May 23, 2013 3:53 PM
To: Weinstock, Larry
Subject: RE: Misdirected Request HQ-2013-006005

Hi Larry,

(b) (5) DPP, (b) (5) ACP, (b) (5) AWP [redacted]

[redacted]

[redacted]

[redacted]

[redacted]

(b) (5) DPP, (b) (5) ACP, (b) (5) AWP [redacted]

[redacted]

Have a good weekend!

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

From: Weinstock, Larry
Sent: Thursday, May 23, 2013 9:32 AM
To: McDermott, Marna
Subject: FW: Misdirected Request HQ-2013-006005

Thanks for your help.

Larry

From: Hamilton, Sabrina
Sent: Tuesday, May 21, 2013 2:22 PM
To: Weinstock, Larry
Cc: Ketcham-Colwill, Nancy; Hammond, Gloria; Faulkner, Martha
Subject: FW: Misdirected Request HQ-2013-006005

Larry,

This is being assigned to you in FOIAonline for coordination with Larry Dollison. Let me know if I should task the assignment to another office or if OEI should be the lead. Thanks

Sabrina

From: Newton, Jonathan
Sent: Tuesday, May 21, 2013 9:33 AM
To: Hamilton, Sabrina
Cc: Simms, Shavonne
Subject: Misdirected Request HQ-2013-006005

Hi Sabrina,

Sorry for the delay; this request (seeking Gina McCarthy's text messages) should go to either OAR or OEI. (b)(5) DPP [redacted]

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: Miller, Kevin
To: Kelly, Lynn
Subject: FW: Questions about a Horner FOIA for Gina
Date: Thursday, June 20, 2013 2:03:40 PM
Attachments: HQ-2013-006967 Request Letter (2).pdf
HQ-2013-006939 Request Letter (2).pdf

I'll stop by and discuss later. (b) (5) DPP, (b) (5) ACP [redacted] Thanks.

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

From: Weinstock, Larry
Sent: Thursday, June 20, 2013 1:54 PM
To: Miller, Kevin
Cc: Ketcham-Colwill, Nancy
Subject: Questions about a Horner FOIA for Gina

Kevin,

(b) (5) DPP, (b) (5) ACP [redacted]

- [redacted]
- [redacted]

Thanks, I have attached the PDFs of both requests. Don't hesitate to call with questions,

Larry Weinstock
564-9226

(b) (5) DPP, (b) (5) ACP [redacted]

[redacted]

(b) (5) DPP, (b) (5) ACP

From: Kelly, Lynn
To: Miller, Kevin
Subject: FW: Request under the Freedom of Information Act – Certain Agency Records re: "Battelle", "AAPCA"
Date: Friday, May 31, 2013 12:10:49 PM
Attachments: ATI_EPA_Battelle_FOI_Request.pdf
Horner_Ack_Ltr-8.pages

FYI - (b) (5) DPP, (b) (5) ACP [redacted] Let me know if you disagree.

Lynn Kelly
Attorney-Advisor
General Law Office
Office of General Counsel
(202) 564-3266
Office # 7426V

From: LindaE Green on behalf of FOIA HQ
Sent: Friday, May 31, 2013 11:19 AM
To: Kelly, Lynn
Cc: Gottesman, Larry
Subject: Fw: Request under the Freedom of Information Act – Certain Agency Records re: "Battelle", "AAPCA"

Lynn,

(b) (5) DPP, (b) (5) ACP [redacted] 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)

****
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-----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: Anderson, Cindy
To: Mark.Nebeker@usdoj.gov
Cc: Kelly, Lynn
Subject: FW: Settlement offer in CEI v. EPA (13-1074) [billing for Gina McCarthy text messages]
Date: Thursday, January 30, 2014 9:36:46 AM
Attachments: image001.png
Importance: High

Mark –

(b) (5) DPP, (b) (5) ACP, (b) (5) AWP [redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

Cindy Anderson
(202) 564-2690

From: Hans Bader [mailto:HBader@cei.org]
Sent: Wednesday, January 29, 2014 8:02 PM
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]

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: 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 4:51:00 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

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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: Kelly, Lynn
To: Hammitt, Jennifer
Subject: FW: drafting Answer to CEI Complaint - your example?
Date: Tuesday, August 13, 2013 5:54:00 PM
Attachments: CEI v EPA 13_434.pdf
FINAL CEI Answer.wpd (b) (5) DPP, (b) (5) ACP, (b) (5) AWP
CourtLink_Document_US-DIS-DCD_1_13cv779_Idx_541927_5.29.2013_145918783.pdf
d_Answer.doc (b) (5) DPP, (b) (5) ACP, (b) (5) AWP
ecf d_Answer.pdf

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: Kelly, Lynn
Sent: Monday, August 12, 2013 4:11 PM
To: Anderson, Cindy
Subject: RE: drafting Answer to CEI Complaint - your example?

(b) (5) DPP, (b) (5) ACP, (b) (5) AWP

[redacted]

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
Sent: Monday, August 12, 2013 3:53 PM
To: Kelly, Lynn
Subject: drafting Answer to CEI Complaint - your example?

Lynn –

(b) (5) DPP, (b) (5) ACP, (b) (5) AWP [redacted]

[redacted] ?

Thanks!
Cindy

From: Kelly, Lynn
To: McDermott, Marna
Subject: FW: foiaonline.xls
Date: Monday, July 22, 2013 3:33:00 PM
Attachments: foiaonline.xls (b) (5) DPP, (b) (5) ACP, (b) (5) AWP

(b)(5) AWP, (b)(5) ACP [redacted]

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

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From: Gottesman, Larry
Sent: Monday, July 22, 2013 3:29 PM
To: Kelly, Lynn
Subject: foiaonline.xls

From: Kelly, Lynn
To: Nguyen, Quoc
Subject: FW: new EPA FOIA case -- CEI v. EPA, Civ. Act. No. 1:13-cv-00779 (B.H.)
Date: Monday, July 08, 2013 10:28:00 AM

(b) (5) DPP, (b) (5) ACP, (b) (5) AWP

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

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From: VanHorn, Daniel (USADC) [mailto:Daniel.VanHorn@usdoj.gov]
Sent: Thursday, June 13, 2013 11:29 AM
To: Miller, Kevin
Cc: Kelly, Lynn; Coles, Doris (USADC); Meriweather, Robin (USADC); Morgan, Keith (USADC)
Subject: RE: new EPA FOIA case -- CEI v. EPA, Civ. Act. No. 1:13-cv-00779 (B.H.)

(b) (5) DPP, (b) (5) ACP, (b) (5) AWP

From: Miller, Kevin [mailto:Miller.Kevin@epa.gov]
Sent: Wednesday, June 12, 2013 4:43 PM
To: VanHorn, Daniel (USADC)
Cc: Kelly, Lynn
Subject: new EPA FOIA case -- CEI v. EPA, Civ. Act. No. 1:13-cv-00779 (B.H.)

Dan,

Hope all is well. (b) (5) DPP, (b) (5) ACP, (b) (5) AWP 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: Miller, Kevin
To: Kelly, Lynn
Subject: FW: quick update FW: CEI v. EPA, 13-0779 (BAH) -- text messages FOIA case
Date: Friday, August 02, 2013 11:55:04 AM

(b) (5) DPP, (b) (5) ACP, (b) (5) AWP [redacted]

K

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

From: Minoli, Kevin
Sent: Friday, August 02, 2013 11:51 AM
To: Miller, Kevin
Cc: Kelly, Lynn
Subject: RE: quick update FW: CEI v. EPA, 13-0779 (BAH) -- text messages FOIA case

(b) (5) DPP, (b) (5) ACP, (b) (5) AWP [redacted] Thanks.

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: Friday, August 02, 2013 10:38 AM
To: Minoli, Kevin
Subject: quick update FW: CEI v. EPA, 13-0779 (BAH) -- text messages FOIA case

Kevin,

(b) (5) DPP, (b) (5) ACP, (b) (5) AWP [redacted]

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: Kelly, Lynn

Sent: Friday, August 02, 2013 10:34 AM
To: Ketcham-Colwill, Nancy
Cc: Miller, Kevin
Subject: FW: CEI v. EPA, 13-0779 (BAH)

Nancy,

(b) (5) DPP, (b) (5) ACP, (b) (5) AWP [redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

(b) (5) DPP, (b) (5) ACP, (b) (5) AWP [redacted]

Thanks,

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

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From: Lo, Michelle (USADC) [mailto:Michelle.Lo2@usdoj.gov]
Sent: Friday, August 02, 2013 9:36 AM
To: Kelly, Lynn
Subject: FW: CEI v. EPA, 13-0779 (BAH)

From: chornerlaw@aol.com [mailto:chornerlaw@aol.com]
Sent: Thursday, August 01, 2013 10:05 PM
To: Lo, Michelle (USADC); hbader@cei.org
Cc: skazman@cei.org
Subject: RE: CEI v. EPA, 13-0779 (BAH)

Dear Michelle,

Rather than endless rounds of clarification, though we have only sought one clear statement, I *think* you may just clarified the ambiguity as explained below. But if you plainly state what is implied we can dismiss.

Below you more strongly imply what seemed the implication before, but is still not stated outright with no room for misunderstanding. That is that Ms. McCarthy *only* used the texting function on her EPA phone for personal messages; and because she never used it for work this is why EPA has preserved none of her texts.

If that is what you were saying, would you please confirm that and that this is also EPA's position. In that case, you need not take any further questions to EPA and I accept the 'no records' response as sufficient such that we will dismiss.

I look forward to your reply.

Best,
Chris

Sent from my Verizon Wireless 4G LTE smartphone

"Lo, Michelle (USADC)" wrote:

Chris,

I will take your request back to the agency, but I would like to be clear in what I will be communicating to the agency. The Agency has already explained that Ms. McCarthy uses text messaging for family and other personal business, not government business and that, because personal text messages are unrelated to Agency business, they were not required to be preserved by the Agency. I am not sure how you read this statement to mean that Ms. McCarthy uses the texting function for EPA business. As I explained to Hans, this FOIA request deals with text messages on 18 specific dates, and we have already provided a very clear explanation for the "no records" response.

If what you are asking is – did Ms. McCarthy send ever any text messages that were work-related – I can ask the EPA if it would be willing to respond to this question even though it is well outside the scope of the FOIA request and does not alter the fact that the EPA did not locate any text messages on the 18 specific dates. If the EPA is willing to respond to the question of whether Ms. McCarthy ever sent any text messages that were work-related, can you represent that you will dismiss this case? As much as I think briefing would be an unnecessary use of the Court's and the parties' resources, it may be that we end up having to brief this matter rather than engage in endless rounds of clarification.

Best,
Michelle

From: Chris Horner [mailto:chornerlaw@aol.com]
Sent: Thursday, August 01, 2013 6:41 PM
To: HBader@cei.org; Lo, Michelle (USADC)
Cc: SKazman@cei.org
Subject: Re: CEI v. EPA, 13-0779 (BAH)

Dera Michelle,

Please consider the following, in addition to what Hans has written you.

EPA's obligation is to *demonstrate* 'no records'. So far they have stated it. Demonstration is found in the bills for her device.

We have obtained what EPA claims to be the relevant (texting) portions of those bills, showing extensive texting activity, so extensive that it is thoroughly implausible that Ms. McCarthy didn't text on those dates.

After we calculated the probability (1 in 7.9 sextillion), we received your statement on EPA's behalf including the portion that is the basis for the ambiguity that Hans refers to and under which we cannot dismiss, but possibly can if you clarify what it is saying:

> Ms. McCarthy uses text messaging to communicate with her family. Ms. McCarthy uses email for government business, and text messaging for family and other personal business. These personal text messages are unrelated to Agency business, and thus were not required to be preserved by the Agency.

To me this plainly implied that EPA's position is that Ms. McCarthy uses email for work and the text messaging function*only* for personal messages, and therefore EPA has not preserved her text messaging. If that is the case,

and EPA state it, then the 'no records' response is sufficient and we can, I believe, dismiss.

However, another of us suggested that in context it implies something materially different, that while Ms. McCarthy uses the texting function for EPA business, on the 18 dates at issue in this matter all texts sent or received by Ms. McCarthy were personal, which is why those specific text messages are not preserved. We have not had our stats people run the probability of that but I suggest it is for all practical purposes the same as the idea that she did not text on those 18 dates.

Regardless, it may imply both but we cannot reasonably discern which, and so we ask you to state which is EPA's assertion. This is material because of EPA's obligation to demonstrate, and the sole (and most reasonable) demonstration -- her phone bills -- indicating that one of these readings is implausible, and under that reading therefore so is the 'no records' claim. The other reading is more plausible and makes the 'no records' response plausible.

So, we simply would like clarification of the ambiguous statement: over the period in question, did EPA preserve some of Ms. McCarthy's text messages -- those that someone determined were work-related -- or did they preserve none of them because they were all personal?

If we have a clear answer to this then depending on that clarification we can possibly dismiss, or we know we cannot justify doing so. We also cannot justify doing so in the absence of a clarification of an ambiguous assertion. Clarifying it is of course much simpler than further litigating this if that clarification would enable resolution and dismissal.

But as such, we need it to be a formal representation, in writing.

We look forward to your response.

Best,
Chris Horner

****
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-----Original Message-----
From: Hans Bader <HBader@cei.org>
To: Lo, Michelle (USADC) (USADC) <Michelle.Lo2@usdoj.gov>
Cc: Sam Kazman <SKazman@cei.org>; Chris Horner <chornerlaw@aol.com>
Sent: Thu, Aug 1, 2013 11:30 am
Subject: RE: CEI v. EPA, 13-0779 (BAH)

I should note that we have no objection to the proposed briefing schedule you suggested

(EPA's Motion for Summary Judgment September 16, 2013
CEI's Opposition to EPA's Motion for Summary Judgment October 16, 2013
EPA's Reply November 6, 2013).

But, hopefully, we can tie up the loose ends described below in my earlier email, and moot the need for any summary judgment motion (by resolving the case before then).

I will call you in a few minutes to try to get these things squared away.

Thanks,

Hans Bader
CEI

From: Hans Bader
Sent: Wednesday, July 31, 2013 8:25 PM
To: 'Lo, Michelle (USADC)'
Cc: Sam Kazman; Chris Horner
Subject: RE: CEI v. EPA, 13-0779 (BAH)

You are correct that I am only seeking the text messages for 18 specific dates, not the text messages in general. The reason I am asking about the text messages not being preserved in general over that period (July 9, 2009 to June 29, 2012) is just to confirm the apparent reason why the text messages don't exist for those 18 dates. Once this is understood, the query makes sense, to clarify matters and eliminate any ambiguities.

Thanks,

Hans

From: Lo, Michelle (USADC) [mailto:Michelle.Lo2@usdoj.gov]
Sent: Wednesday, July 31, 2013 6:19 PM
To: Hans Bader
Cc: Sam Kazman; Chris Horner
Subject: RE: CEI v. EPA, 13-0779 (BAH)

Dear Hans,

As I stated below and as reflected in the EPA's answer to the complaint, the Agency did not locate any text messages for the 18 dates specified by your FOIA request. As for your question about the preservation of Ms. McCarthy's text messages in general, we are now going well beyond the scope of this FOIA litigation, and I do not believe this is the appropriate forum to address this question.

Thanks,
Michelle

From: Hans Bader [mailto:HBader@cei.org]
Sent: Wednesday, July 31, 2013 4:08 PM
To: Lo, Michelle (USADC)
Cc: Sam Kazman; Chris Horner
Subject: RE: CEI v. EPA, 13-0779 (BAH)

Thanks for the clarifying details. Does this mean that her text messages in general weren't preserved, or just that the agency didn't locate any such messages for the 18 dates specified by the FOIA request? (Just tying up loose ends.)

Thanks,

Hans

From: Lo, Michelle (USADC) [mailto:Michelle.Lo2@usdoj.gov]
Sent: Wednesday, July 31, 2013 3:42 PM
To: Hans Bader
Cc: Sam Kazman; Chris Horner
Subject: RE: CEI v. EPA, 13-0779 (BAH)

Dear Hans,

Thank you for the call just now. To summarize our discussion, I've inquired with the EPA about your question below, and EPA has explained that the Agency did not locate any text messages responsive to your FOIA request at issue in this case. Moreover and in any event, Ms. McCarthy uses text messaging to communicate with her family. Ms. McCarthy uses email for government business, and text messaging for family and other personal business. These personal text messages are unrelated to Agency business, and thus were not required to be preserved by the Agency.

It's my understanding that you will be filing a stipulation of dismissal in this case. I do have one edit, which is to add "with each party to bear its own costs and fees" to the end of the stipulation. I have also made a formatting change to the signature block since my telephone number is changing. If these changes are acceptable to you, you are authorized to file the stipulation on behalf of the parties.

Thanks,
Michelle

Michelle Lo
Assistant United States Attorney
Civil Division
555 4th Street, N.W.
Washington, D.C. 20530
(202) 252-2541 – ***Please note new number***
(202) 514-8780 fax
Michelle.Lo2@usdoj.gov

From: Hans Bader [mailto:HBader@cei.org]
Sent: Monday, July 29, 2013 3:02 PM
To: Lo, Michelle (USADC)
Cc: Sam Kazman; Chris Horner
Subject: RE: CEI v. EPA, 13-0779 (BAH)

One final thing: My colleagues are curious and want an answer to the following question before we dismiss the case: How can there be no responsive records (as stated by EPA in its no-records response, and echoed in the answer), that is, no text messages, when EPA has elsewhere produced documents to us saying that Ms. McCarthy sent hundreds of text messages using her EPA device (see the attached administrative response by EPA to Chris Horner's FOIA request – the first attached file is EPA's cover letter in response to that request, and the second is its substantive response)? I'd like to get that clarification on that issue before filing the stipulation I sent earlier.

Thanks,

Hans Bader
CEI

From: Hans Bader
Sent: Monday, July 29, 2013 12:17 PM
To: 'Lo, Michelle (USADC)'
Cc: Sam Kazman
Subject: RE: CEI v. EPA, 13-0779 (BAH)

Oops. The draft stipulation I sent in the below email had the wrong docket number on it. That has been fixed in the attached draft stipulation.

From: Hans Bader

Sent: Monday, July 29, 2013 12:11 PM
To: 'Lo, Michelle (USADC)'
Cc: Sam Kazman
Subject: RE: CEI v. EPA, 13-0779 (BAH)

Chris Horner remains very skeptical of the no-records response. Nevertheless, it seems to me that it may not be worth the candle to keep litigating this particular case, as a prudential matter.

Accordingly, plaintiff would be willing to file the attached stipulation of dismissal. If this is acceptable to you, then it can be filed with the court, and it will not be necessary to set a briefing schedule.

Sorry for the delay in responding.

Thank you.

Hans Bader
Competitive Enterprise Institute
(202) 331-2278
hbader@cei.org

From: Lo, Michelle (USADC) [mailto:Michelle.Lo2@usdoj.gov]
Sent: Monday, July 29, 2013 10:11 AM
To: Hans Bader
Subject: RE: CEI v. EPA, 13-0779 (BAH)

Dear Hans:

Per Judge Howell's Standing Order, the parties are to jointly prepare and submit a report indicating whether the agency has made a final determination on compliance with the FOIA request at issue and propose a schedule for the filing of dispositive motions within 14 days after any defendant appears, or by this Friday, August 2. As you know, the EPA issued a "no records" response to CEI's FOIA request on May 31, 2013. Provided CEI intends to proceed with this litigation, we propose the following briefing schedule:

EPA's Motion for Summary Judgment	September 16, 2013
CEI's Opposition to EPA's Motion for Summary Judgment	October 16, 2013
EPA's Reply	November 6, 2013

Please let me know if the above proposal is agreeable to you. Thank you.

Michelle Lo
Assistant United States Attorney
Civil Division
555 4th Street, N.W.
Washington, D.C. 20530
(202) 252-2541 – ***Please note new number***
(202) 514-8780 fax
Michelle.Lo2@usdoj.gov

From: Hans Bader [mailto:HBader@cei.org]
Sent: Wednesday, July 17, 2013 6:06 PM
To: Lo, Michelle (USADC)
Subject: RE: CEI v. EPA, 13-0779 (BAH)

I am still waiting to hear back. Sorry about the delay.

From: Lo, Michelle (USADC) [mailto:Michelle.Lo2@usdoj.gov]
Sent: Wednesday, July 17, 2013 6:00 PM
To: Hans Bader
Subject: RE: CEI v. EPA, 13-0779 (BAH)

Hans:

Have you had a chance to discuss with your colleagues whether CEI intends to move forward with this litigation in light of the EPA's no records response?

Thanks,
Michelle

From: Lo, Michelle (USADC)
Sent: Thursday, July 11, 2013 4:12 PM
To: Hans Bader <HBader@cei.org> (HBader@cei.org)
Subject: CEI v. EPA, 13-0779 (BAH)

Hans:

Attached is the EPA's response to CEI's FOIA request for "copies of all text messages sent by Assistant Administrator for Air and Radiation Gina McCarthy on a mobile telephone provided for her use by the Agency" that I was referring to on our call just now. Please let me know if CEI believes that further litigation of this case will be necessary in light of the EPA's no records response. Thank you.

<< File: Final Response 6005.pdf >>

Michelle Lo
Assistant United States Attorney
Civil Division
555 4th Street, N.W.
Washington, D.C. 20530
(202) 514-5134; (202) 514-8780 fax
Michelle.Lo2@usdoj.gov

From: Anderson, Cindy
To: Kelly, Lynn
Subject: FW: updated cases (w/due dates) for Bi-Weekly w/FO (11.6.13)
Date: Tuesday, November 05, 2013 11:15:38 AM

Cindy
564-2690

From: Anderson, Cindy
Sent: Monday, November 04, 2013 10:25 AM
To: Kelly, Lynn
Subject: updated cases (w/due dates) for Bi-Weekly w/FO (11.6.13)

Lynn –

Here are the updated dates for 3 cases under my responsibility (jointly w/Jennifer for PacifiCorps)

(b) (5) DPP, (b) (5) AC [redacted] (5) AWP [redacted]

12/3/13 MSJ, CEI v. EPA, FOIA for bills for Gina McCarthy text messages for 3yr period (June 2009-2013)

Cindy Anderson
EPA/OGC
(202) 564-2690

From: Kelly, Lynn
To: McDermott, Marna
Subject: FYI Only - FW: CEI v. EPA, 13-0779 (BAH)
Date: Friday, August 02, 2013 10:37:00 AM

(b) (5) DPP, (b) (5) ACP, (b) (5) AWP [redacted]

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

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From: Kelly, Lynn
Sent: Friday, August 02, 2013 10:34 AM
To: Ketcham-Colwill, Nancy
Cc: Miller, Kevin
Subject: FW: CEI v. EPA, 13-0779 (BAH)

Nancy,

(b) (5) DPP, (b) (5) ACP, (b) (5) AWP [redacted]

[redacted]

[redacted]

[redacted]

[redacted]

(b) (5) DPP, (b) (5) ACP, (b) (5) AWP [redacted]

[redacted]

[redacted]

[redacted]

Thanks,

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

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From: Lo, Michelle (USADC) [mailto:Michelle.Lo2@usdoj.gov]
Sent: Friday, August 02, 2013 9:36 AM
To: Kelly, Lynn
Subject: FW: CEI v. EPA, 13-0779 (BAH)

From: chornerlaw@aol.com [mailto:chornerlaw@aol.com]
Sent: Thursday, August 01, 2013 10:05 PM
To: Lo, Michelle (USADC); hbader@cei.org
Cc: skazman@cei.org
Subject: RE: CEI v. EPA, 13-0779 (BAH)

Dear Michelle,

Rather than endless rounds of clarification, though we have only sought one clear statement, I *think* you may just clarified the ambiguity as explained below. But if you plainly state what is implied we can dismiss.

Below you more strongly imply what seemed the implication before, but is still not stated outright with no room for misunderstanding. That is that Ms. McCarthy *only* used the texting function on her EPA phone for personal messages; and because she never used it for work this is why EPA has preserved none of her texts.

If that is what you were saying, would you please confirm that and that this is also EPA's position. In that case, you need not take any further questions to EPA and I accept the 'no records' response as sufficient such that we will dismiss.

I look forward to your reply.

Best,
Chris

Sent from my Verizon Wireless 4G LTE smartphone

"Lo, Michelle (USADC)" wrote:

Chris,

I will take your request back to the agency, but I would like to be clear in what I will be communicating to the agency. The Agency has already explained that Ms. McCarthy uses text messaging for family and other personal business, not government business and that, because personal text messages are unrelated to Agency business, they were not required to be preserved by the Agency. I am not sure how you read this statement to mean that Ms. McCarthy uses the texting function for EPA business. As I explained to Hans, this FOIA request deals with text messages on 18 specific dates, and we have already provided a very clear explanation for the "no records" response.

If what you are asking is – did Ms. McCarthy send ever any text messages that were work-related – I can ask the EPA if it would be willing to respond to this question even though it is well outside the scope of the FOIA request and does not alter the fact that the EPA did not locate any text messages on the 18 specific dates. If the EPA is willing to respond to the question of whether Ms. McCarthy ever sent any text messages that were work-related, can you represent that you will dismiss this case? As much as I think briefing would be an unnecessary use of the Court's and the parties' resources, it may be that we end up having to brief this matter rather than engage in endless rounds of clarification.

Best,
Michelle

From: Chris Horner [mailto:chornerlaw@aol.com]
Sent: Thursday, August 01, 2013 6:41 PM
To: HBader@cei.org; Lo, Michelle (USADC)
Cc: SKazman@cei.org
Subject: Re: CEI v. EPA, 13-0779 (BAH)

Dera Michelle,

Please consider the following, in addition to what Hans has written you.

EPA's obligation is to *demonstrate* 'no records'. So far they have stated it. Demonstration is found in the bills for her device.

We have obtained what EPA claims to be the relevant (texting) portions of those bills, showing extensive texting activity, so extensive that it is thoroughly implausible that Ms. McCarthy didn't text on those dates.

After we calculated the probability (1 in 7.9 sextillion), we received your statement on EPA's behalf including the portion that is the basis for the ambiguity that Hans refers to and under which we cannot dismiss, but possibly can if you clarify what it is saying:

> Ms. McCarthy uses text messaging to communicate with her family. Ms. McCarthy uses email for government business, and text messaging for family and other personal business. These personal text messages are unrelated to Agency business, and thus were not required to be preserved by the Agency.

To me this plainly implied that EPA's position is that Ms. McCarthy uses email for work and the text messaging function*only* for personal messages, and therefore EPA has not preserved her text messaging. If that is the case, and EPA state it, then the 'no records' response is sufficient and we can, I believe, dismiss.

However, another of us suggested that in context it implies something materially different, that while Ms. McCarthy uses the texting function for EPA business, on the 18 dates at issue in this matter all texts sent or received by Ms. McCarthy were personal, which is why those specific text messages are not preserved. We have not had our stats people run the probability of that but I suggest it is for all practical purposes the same as the idea that she did not text on those 18 dates.

Regardless, it may imply both but we cannot reasonably discern which, and so we ask you to state which is EPA's assertion. This is material because of EPA's obligation to demonstrate, and the sole (and most reasonable) demonstration -- her phone bills -- indicating that one of these readings is implausible, and under that reading therefore so is the 'no records' claim. The other reading is more plausible and makes the 'no records' response plausible.

So, we simply would like clarification of the ambiguous statement: over the period in question, did EPA preserve some of Ms. McCarthy's text messages -- those that someone determined were work-related -- or did they preserve none of them because they were all personal?

If we have a clear answer to this then depending on that clarification we can possibly dismiss, or we know we cannot justify doing so. We also cannot justify doing so in the absence of a clarification of an ambiguous assertion. Clarifying it is of course much simpler than further litigating this if that clarification would enable resolution and dismissal.

But as such, we need it to be a formal representation, in writing.

We look forward to your response.

Best,
Chris Horner

****
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: Hans Bader <HBader@cei.org>
To: Lo, Michelle (USADC) (USADC) <Michelle.Lo2@usdoj.gov>
Cc: Sam Kazman <SKazman@cei.org>; Chris Horner <chornerlaw@aol.com>
Sent: Thu, Aug 1, 2013 11:30 am
Subject: RE: CEI v. EPA, 13-0779 (BAH)

I should note that we have no objection to the proposed briefing schedule you suggested

(EPA's Motion for Summary Judgment September 16, 2013
CEI's Opposition to EPA's Motion for Summary Judgment October 16, 2013
EPA's Reply November 6, 2013).

But, hopefully, we can tie up the loose ends described below in my earlier email, and moot the need for any summary judgment motion (by resolving the case before then).

I will call you in a few minutes to try to get these things squared away.

Thanks,

Hans Bader
CEI

From: Hans Bader
Sent: Wednesday, July 31, 2013 8:25 PM
To: 'Lo, Michelle (USADC)'
Cc: Sam Kazman; Chris Horner
Subject: RE: CEI v. EPA, 13-0779 (BAH)

You are correct that I am only seeking the text messages for 18 specific dates, not the text messages in general. The reason I am asking about the text messages not being preserved in general over that period (July 9, 2009 to June 29, 2012) is just to confirm the apparent reason why the text messages don't exist for those 18 dates. Once this is understood, the query makes sense, to clarify matters and eliminate any ambiguities.

Thanks,

Hans

From: Lo, Michelle (USADC) [mailto:Michelle.Lo2@usdoj.gov]
Sent: Wednesday, July 31, 2013 6:19 PM
To: Hans Bader
Cc: Sam Kazman; Chris Horner
Subject: RE: CEI v. EPA, 13-0779 (BAH)

Dear Hans,

As I stated below and as reflected in the EPA's answer to the complaint, the Agency did not locate any text messages for the 18 dates specified by your FOIA request. As for your question about the preservation of Ms. McCarthy's text messages in general, we are now going well beyond the scope of this FOIA litigation, and I do not believe this is the appropriate forum to address this question.

Thanks,
Michelle

From: Hans Bader [mailto:HBader@cei.org]
Sent: Wednesday, July 31, 2013 4:08 PM
To: Lo, Michelle (USADC)
Cc: Sam Kazman; Chris Horner
Subject: RE: CEI v. EPA, 13-0779 (BAH)

Thanks for the clarifying details. Does this mean that her text messages in general weren't preserved, or just that the agency didn't locate any such messages for the 18 dates specified by the FOIA request? (Just tying up loose ends.)

Thanks,

Hans

From: Lo, Michelle (USADC) [mailto:Michelle.Lo2@usdoj.gov]
Sent: Wednesday, July 31, 2013 3:42 PM
To: Hans Bader
Cc: Sam Kazman; Chris Horner
Subject: RE: CEI v. EPA, 13-0779 (BAH)

Dear Hans,

Thank you for the call just now. To summarize our discussion, I've inquired with the EPA about your question below, and EPA has explained that the Agency did not locate any text messages responsive to your FOIA request at issue in this case. Moreover and in any event, Ms. McCarthy uses text messaging to communicate with her family. Ms. McCarthy uses email for government business, and text messaging for family and other personal business. These personal text messages are unrelated to Agency business, and thus were not required to be preserved by the Agency.

It's my understanding that you will be filing a stipulation of dismissal in this case. I do have one edit, which is to add "with each party to bear its own costs and fees" to the end of the stipulation. I have also made a formatting change to the signature block since my telephone number is changing. If these changes are acceptable to you, you are authorized to file the stipulation on behalf of the parties.

Thanks,
Michelle

Michelle Lo
Assistant United States Attorney
Civil Division
555 4th Street, N.W.
Washington, D.C. 20530
(202) 252-2541 – ***Please note new number***
(202) 514-8780 fax
Michelle.Lo2@usdoj.gov

From: Hans Bader [mailto:HBader@cei.org]
Sent: Monday, July 29, 2013 3:02 PM
To: Lo, Michelle (USADC)
Cc: Sam Kazman; Chris Horner
Subject: RE: CEI v. EPA, 13-0779 (BAH)

One final thing: My colleagues are curious and want an answer to the following question before we dismiss the case: How can there be no responsive records (as stated by EPA in its no-records response, and echoed in the answer), that is, no text messages, when EPA has elsewhere produced documents to

us saying that Ms. McCarthy sent hundreds of text messages using her EPA device (see the attached administrative response by EPA to Chris Horner's FOIA request – the first attached file is EPA's cover letter in response to that request, and the second is its substantive response)? I'd like to get that clarification on that issue before filing the stipulation I sent earlier.

Thanks,

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CEI

From: Hans Bader
Sent: Monday, July 29, 2013 12:17 PM
To: 'Lo, Michelle (USADC)'
Cc: Sam Kazman
Subject: RE: CEI v. EPA, 13-0779 (BAH)

Oops. The draft stipulation I sent in the below email had the wrong docket number on it. That has been fixed in the attached draft stipulation.

From: Hans Bader
Sent: Monday, July 29, 2013 12:11 PM
To: 'Lo, Michelle (USADC)'
Cc: Sam Kazman
Subject: RE: CEI v. EPA, 13-0779 (BAH)

Chris Horner remains very skeptical of the no-records response. Nevertheless, it seems to me that it may not be worth the candle to keep litigating this particular case, as a prudential matter.

Accordingly, plaintiff would be willing to file the attached stipulation of dismissal. If this is acceptable to you, then it can be filed with the court, and it will not be necessary to set a briefing schedule.

Sorry for the delay in responding.

Thank you.

Hans Bader
Competitive Enterprise Institute
(202) 331-2278
hbader@cei.org

From: Lo, Michelle (USADC) [mailto:Michelle.Lo2@usdoj.gov]
Sent: Monday, July 29, 2013 10:11 AM
To: Hans Bader
Subject: RE: CEI v. EPA, 13-0779 (BAH)

Dear Hans:

Per Judge Howell's Standing Order, the parties are to jointly prepare and submit a report indicating whether the agency has made a final determination on compliance with the FOIA request at issue and propose a schedule for the filing of dispositive motions within 14 days after any defendant appears, or by this Friday, August 2. As you know, the EPA issued a "no records" response to CEI's FOIA request on May 31, 2013. Provided CEI intends to proceed with this litigation, we propose the following briefing schedule:

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CEI's Opposition to EPA's Motion for Summary Judgment	October 16, 2013

Please let me know if the above proposal is agreeable to you. Thank you.

Michelle Lo
Assistant United States Attorney
Civil Division
555 4th Street, N.W.
Washington, D.C. 20530
(202) 252-2541 – ***Please note new number***
(202) 514-8780 fax
Michelle.Lo2@usdoj.gov

From: Hans Bader [mailto:HBader@cei.org]
Sent: Wednesday, July 17, 2013 6:06 PM
To: Lo, Michelle (USADC)
Subject: RE: CEI v. EPA, 13-0779 (BAH)

I am still waiting to hear back. Sorry about the delay.

From: Lo, Michelle (USADC) [mailto:Michelle.Lo2@usdoj.gov]
Sent: Wednesday, July 17, 2013 6:00 PM
To: Hans Bader
Subject: RE: CEI v. EPA, 13-0779 (BAH)

Hans:

Have you had a chance to discuss with your colleagues whether CEI intends to move forward with this litigation in light of the EPA's no records response?

Thanks,
Michelle

From: Lo, Michelle (USADC)
Sent: Thursday, July 11, 2013 4:12 PM
To: Hans Bader <HBader@cei.org> (HBader@cei.org)
Subject: CEI v. EPA, 13-0779 (BAH)

Hans:

Attached is the EPA's response to CEI's FOIA request for "copies of all text messages sent by Assistant Administrator for Air and Radiation Gina McCarthy on a mobile telephone provided for her use by the Agency" that I was referring to on our call just now. Please let me know if CEI believes that further litigation of this case will be necessary in light of the EPA's no records response. Thank you.

<< File: Final Response 6005.pdf >>

Michelle Lo
Assistant United States Attorney
Civil Division
555 4th Street, N.W.
Washington, D.C. 20530
(202) 514-5134; (202) 514-8780 fax
Michelle.Lo2@usdoj.gov

From: Kelly, Lynn
To: McDermott, Marna
Subject: FYI: Upcoming response to CEI request (and two other small things)
Date: Monday, July 15, 2013 11:31:00 AM

Marna,

(b) (5) DPP, (b) (5) ACP, (b) (5) AWP [redacted]

[redacted]

(b) (5) DPP [redacted]

Hope you had a great vacation! And welcome back.

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

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From: Kelly, Lynn
To: Nguyen, Quoc
Subject: Formatting fixed on Bi-weekly
Date: Wednesday, November 06, 2013 11:39:00 AM
Attachments: GLO reg review template 110513 fixed.docx (b) (5) DPP, (b) (5) ACP, (b) (5) AWP

Quoc,

Here is a version of today's agenda with the formatting of the case updates fixed/cleaned up. The next one is during your reign, so I thought I would pass this on to you so you can use to update next time. I won't miss this!

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: Miller, Kevin
To: Kelly, Lynn
Subject: RE: Administrator"s staff w/r/2 FOIA interest
Date: Thursday, August 08, 2013 4:21:09 PM

Let's schedule something. Invite Quoc as optional.

K

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

From: Kelly, Lynn
Sent: Thursday, August 08, 2013 11:49 AM
To: Anderson, Cindy; Miller, Kevin
Subject: RE: Administrator's staff w/r/2 FOIA interest

(b) (5) DPP, (b) (5) AWP, (b) (5) ACP [redacted]

[redacted]

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

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From: Anderson, Cindy
Sent: Thursday, August 08, 2013 10:44 AM
To: Miller, Kevin
Cc: Kelly, Lynn
Subject: Administrator's staff w/r/2 FOIA interest

Kevin (& Lynn) –

(b) (5) DPP, (b) (5) AWP, (b) (5) ACP [redacted]?

cindy

From: Ketcham-Colwill, Nancy
Sent: Thursday, August 08, 2013 10:11 AM
To: Anderson, Cindy
Subject: RE: Never mind about "(b) (5) DPP [redacted]

(b) (5) DPP, (b) (5) ACP, (b) (5) AWP [redacted]

From: Anderson, Cindy
Sent: Thursday, August 08, 2013 9:37 AM
To: Ketcham-Colwill, Nancy
Subject: RE: Never mind about (b) (5) DPP [redacted]

Nancy –

[redacted]

(b) (5) DPP, (b) (5) ACP, (b) (5) AWP [redacted]

[redacted] ?

Thanks!
Cindy
564-2690

From: Ketcham-Colwill, Nancy
Sent: Wednesday, August 07, 2013 7:57 PM
To: Anderson, Cindy
Subject: Never mind about (b) (5) DPP [redacted]

You're so popular with me and my computer, we sent this to you instead of Denise Anderson, Bob's assistant. Sorry!

From: Ketcham-Colwill, Nancy
Sent: Wednesday, August 07, 2013 7:31 PM
To: Geller, Michael; Ingram, Amir; Anderson, Cindy
Cc: Goffman, Joseph; McCabe, Janet
Subject: (b) (5) DPP [redacted]

(b) (5) DPP [redacted]

From: Anderson, Cindy
To: Kelly, Lynn
Subject: RE: BI-WEEKLY AGENDA ITEMS
Date: Tuesday, October 22, 2013 10:58:49 AM

Yes, please –
Thanks -

Cindy
564-2690

From: Kelly, Lynn
Sent: Tuesday, October 22, 2013 10:58 AM
To: Anderson, Cindy
Subject: RE: BI-WEEKLY AGENDA ITEMS

(b) (5) DPP, (b) (5) AWP, (b) (5) ACP
[redacted]?

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
Sent: Tuesday, October 22, 2013 10:28 AM
To: Kelly, Lynn
Subject: RE: BI-WEEKLY AGENDA ITEMS

Lynn –

I have 2 cases with following updated deadlines:

Nov. 14 – Motion for Summary Judgment **CEI v. EPA (13-1074)** – billing invoices for Gina McCarthy's use of text messages

(b) (5) DPP, (b) (5) AWP, (b) (5) ACP
[redacted]

[redacted]

Thanks!

Cindy
564-2690

From: Kelly, Lynn
Sent: Tuesday, October 22, 2013 10:20 AM
To: OGC GLO ILPG; Bennett, Karen
Subject: BI-WEEKLY AGENDA ITEMS
Importance: High

Kevin has asked for our items by 3 pm today, sorry for the quick turn-around. Could folks send me your items and update the 60 day- upcoming litigation deadlines? The Bi-weekly is tomorrow at 11:00 am in 4045.

Thanks.

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: Ketcham-Colwill, Nancy
To: Weinstock, Larry; Kelly, Lynn; Minoli, Kevin; Miller, Kevin; Johnson, Alisha; Hamilton, Sabrina
Subject: RE: CEI Sues EPA for Gina McCarthy"s Text and Training Records
Date: Monday, July 15, 2013 3:11:40 PM

(b) (5) DPP, (b) (5) ACP, (b) (5) AWP [redacted]

[redacted] ?

From: Weinstock, Larry
Sent: Monday, July 15, 2013 3:07 PM
To: Kelly, Lynn; Ketcham-Colwill, Nancy; Minoli, Kevin; Miller, Kevin; Johnson, Alisha
Cc: Goffman, Joseph
Subject: RE: CEI Sues EPA for Gina McCarthy's Text and Training Records

(b) (5) DPP, (b) (5) ACP, (b) (5) AWP [redacted]

Larry

From: Kelly, Lynn
Sent: Monday, July 15, 2013 2:53 PM
To: Ketcham-Colwill, Nancy; Weinstock, Larry; Minoli, Kevin; Miller, Kevin; Johnson, Alisha
Cc: Goffman, Joseph
Subject: RE: CEI Sues EPA for Gina McCarthy's Text and Training Records

(b) (5) DPP, (b) (5) ACP, (b) (5) AWP [redacted]

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

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From: Ketcham-Colwill, Nancy
Sent: Monday, July 15, 2013 2:44 PM
To: Kelly, Lynn; Weinstock, Larry; Minoli, Kevin; Miller, Kevin; Johnson, Alisha
Cc: Goffman, Joseph
Subject: RE: CEI Sues EPA for Gina McCarthy's Text and Training Records

(b) (5) DPP, (b) (5) ACP, (b) (5) AWP [redacted]

[redacted]

(b) (5) DPP, (b) (5) ACP, (b) (5) AWP

From: Kelly, Lynn
Sent: Monday, July 15, 2013 2:20 PM
To: Weinstock, Larry; Minoli, Kevin; Ketcham-Colwill, Nancy; Miller, Kevin
Subject: RE: CEI Sues EPA for Gina McCarthy's Text and Training Records

(b) (5) DPP, (b) (5) ACP, (b) (5) AWP [redacted]

[redacted]

[redacted]

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From: Weinstock, Larry
Sent: Monday, July 15, 2013 2:05 PM
To: Minoli, Kevin; Kelly, Lynn; Ketcham-Colwill, Nancy; Miller, Kevin
Subject: RE: CEI Sues EPA for Gina McCarthy's Text and Training Records

[redacted]

[redacted]

[redacted]

(b) (5) DPP, (b) (5) A[redacted]

Larry

From: Minoli, Kevin
Sent: Monday, July 15, 2013 1:38 PM
To: Kelly, Lynn; Ketcham-Colwill, Nancy; Weinstock, Larry; Miller, Kevin
Subject: RE: CEI Sues EPA for Gina McCarthy's Text and Training Records

Thanks. (b) (5) DPP, (b) (5) ACP [redacted]

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: Monday, July 15, 2013 1:27 PM
To: Minoli, Kevin; Ketcham-Colwill, Nancy; Weinstock, Larry; Miller, Kevin
Subject: RE: CEI Sues EPA for Gina McCarthy's Text and Training Records

Just reading now.

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

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From: Minoli, Kevin
Sent: Monday, July 15, 2013 1:26 PM
To: Ketcham-Colwill, Nancy; Weinstock, Larry; Kelly, Lynn; Miller, Kevin
Subject: Fw: CEI Sues EPA for Gina McCarthy's Text and Training Records

Hey folks- do we have a copy of the complaint?

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

From: Johnson, Alisha
Sent: Monday, July 15, 2013 1:05:26 PM

To: Minoli, Kevin
Subject: Fw: CEI Sues EPA for Gina McCarthy's Text and Training Records

Fyi - (b) (5) DPP, (b) (5) ACP
[redacted] ?

From: Emily Yehle <eyehle@eenews.net>
Sent: Monday, July 15, 2013 1:02:31 PM
To: Johnson, Alisha
Subject: FW: CEI Sues EPA for Gina McCarthy's Text and Training Records

Alisha,

Any comment on this lawsuit? Deadline is 3.

Thanks!

Emily Yehle
Reporter
eyehle@eenews.net
202-446-0437 (p)
202-737-5299 (f)

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From: Brian McNicoll <bmac@cei.org>
Date: July 15, 2013, 12:01:38 PM EDT
To: <jplautz@eenews.net>
Subject: CEI Sues EPA for Gina McCarthy's Text and Training Records

Contact:
Brian McNicoll, 202-331-2765

CEI Sues EPA for Gina McCarthy's Text and Training Records

Nearing Senate Confirmation Vote, Nominee Remains Shielded by Agency Stonewalling

WASHINGTON, D.C., July 15, 2013 – The Competitive Enterprise Institute filed suit today in federal court to force the Environmental Protection Agency to turn

over phone bills for the EPA-issued PDA issued to Gina McCarthy, a top EPA official and President Obama's nominee to serve as the next administrator.

CEI's suit also seeks records EPA has failed to turn over that would reflect whether McCarthy received and/or acknowledged the required training in EPA electronic record use and preservation 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." A similar, contemporaneous request produced "Scholar of Ethics" awards to the false identity assumed by the woman McCarthy seeks to replace, former administrator Lisa Jackson. EPA has failed to provide any evidence of McCarthy receiving the required training.

A Senate vote on McCarthy's nomination could come as soon as this week despite several unanswered questions involving her electronic correspondence and recordkeeping practices, including why EPA is withholding thousands of her emails about the "war on coal" in a lawsuit and unlawfully refusing to produce even factual information such as the dates, parties and subject matter.

"Obama's EPA is waving red flags all over the place," said **Christopher Horner**, Senior Fellow at CEI and author of "The Liberal War on Transparency," research for which turned up the 'Richard Windsor' fake name email scandal and other evidence of EPA avoiding disclosure requirements. "Ultimately, we will learn if EPA's problems with non-official email accounts, and accounts not identifying the account holder, extend to their use of private accounts for texting or even destroying this alternative to email, as it seems. Resolving the questions in today's suit, and about her use of a personal account, should be necessary conditions to moving forward on her nomination. This also would do much to address the growing impression Gina McCarthy has something to hide and that EPA is going to great lengths to help her hide it."

CEI submitted the IT-training request under the Freedom of Information Act in April, as well as one for text messages from McCarthy's EPA-issued phone on 18 specific dates. The latter request came after CEI was reliably informed McCarthy was warned to stop texting after concerns about the propriety of messages, specifically those sent on days she appeared before Congress.

EPA has claimed it has no such text messages. CEI then sought McCarthy's relevant phone bills, which should establish whether she used the text feature as an alternative to email on her EPA-assigned device, including on those dates. In a separate request, presently on administrative appeal, CEI also seeks work-related text messages from McCarthy's non-EPA-issued phone, which under EPA rules are public records subject to FOIA and which McCarthy is in fact responsible for turning over to EPA without being asked.

EPA has indicated satisfying CEI's request for phone bills would take two hours or less. But to further expedite matters CEI narrowed the request to seek only those portions that reflect text activity. If those records were created, on any device, EPA must explain what happened between those records being created and their "no records" response. The interim step between creation and claiming

"no records," is that they have been destroyed – a violation of federal law.

EPA has apparently yet to include text messages in response to any request for records whether from Congress or through the FOIA process, although the law plainly says these messages are public records. CEI's investigation of EPA's transparency practices has revealed a pattern of resistance to disclosure of its activities. Already this has led to an Inspector General inquiry into EPA's instant messaging practices, presumably including whether EPA preserves IMs as required.

"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.]"

Horner noted a pattern of efforts on behalf of EPA to protect McCarthy until she can be approved by the Senate. Already, in response to a court order for EPA to turn over about 12,000 emails related to "climate" and "coal," the dog not barking in those relatively few emails EPA did turn over was McCarthy, even though she is the lieutenant in charge of such matters. Thousands of those emails that were produced were heavily, sometimes comically redacted despite a directive from President Obama that FOIA requests should be treated with "a presumption of disclosure." These records did nonetheless reveal McCarthy was among the circle with whom Jackson used the false identity "Richard Windsor," rather than her own name, on email communications with top staffers and key outside allies. Jackson resigned after the court order to produce them, apparently to avoid answering questions about her decision to conduct certain official correspondence as such.

Other EPA executives, including Jim Martin, director of EPA's Region 8 in Denver, have resigned after having been found during litigation initiated by CEI to have regularly used a private email account to conduct official business. CEI similarly awaits emails from the Region 9 administrator's Comcast email account which he used for EPA-related correspondence. EPA's general counsel also resigned the day Horner released copies of screen shots establishing that the Windsor account was installed on Jackson's EPA computers.

"This particular case is one step on the path to determining the extent to which EPA is not meeting its obligations to keep the public informed," Horner said. "EPA should have moved matters along by now, particularly with Ms. McCarthy subject to scrutiny for a promotion."

► **Read the filed complaint here.**

CEI is a non-profit, non-partisan public policy group dedicated to the principles of free enterprise and limited government. For more information about CEI, please visit our website, cei.org, and blogs, Globalwarming.org and OpenMarket.org. Follow CEI on Twitter! Twitter.com/ceidotorg.

This message was sent to jplautz@eenews.net from:

Competitive Enterprise Institute | 1899 L Street NW 12th Floor | Washington, DC 20036

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From: Kelly, Lynn
To: Kelly, Lynn; Ketcham-Colwill, Nancy
Cc: Miller, Kevin
Subject: RE: CEI v. EPA, 13-0779 (BAH)
Date: Friday, August 02, 2013 12:01:00 PM

Nancy,

(b) (5) DPP, (b) (5) ACP, (b) (5) AWP [redacted]

[redacted]

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

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From: Kelly, Lynn
Sent: Friday, August 02, 2013 10:34 AM
To: Ketcham-Colwill, Nancy
Cc: Miller, Kevin
Subject: FW: CEI v. EPA, 13-0779 (BAH)

Nancy,

(b) (5) DPP, (b) (5) ACP, (b) (5) AWP [redacted]

[redacted]

[redacted]

[redacted]

(b) (5) DPP, (b) (5) ACP, (b) (5) AWP [redacted]

[redacted]

[redacted]

[redacted]

[redacted]

Thanks,

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

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From: Lo, Michelle (USADC) [mailto:Michelle.Lo2@usdoj.gov]
Sent: Friday, August 02, 2013 9:36 AM
To: Kelly, Lynn
Subject: FW: CEI v. EPA, 13-0779 (BAH)

From: chornerlaw@aol.com [mailto:chornerlaw@aol.com]
Sent: Thursday, August 01, 2013 10:05 PM
To: Lo, Michelle (USADC); hbader@cei.org
Cc: skazman@cei.org
Subject: RE: CEI v. EPA, 13-0779 (BAH)

Dear Michelle,

Rather than endless rounds of clarification, though we have only sought one clear statement, I *think* you may just clarified the ambiguity as explained below. But if you plainly state what is implied we can dismiss.

Below you more strongly imply what seemed the implication before, but is still not stated outright with no room for misunderstanding. That is that Ms. McCarthy *only* used the texting function on her EPA phone for personal messages; and because she never used it for work this is why EPA has preserved none of her texts.

If that is what you were saying, would you please confirm that and that this is also EPA's position. In that case, you need not take any further questions to EPA and I accept the 'no records' response as sufficient such that we will dismiss.

I look forward to your reply.

Best,
Chris

Sent from my Verizon Wireless 4G LTE smartphone

"Lo, Michelle (USADC)" wrote:

Chris,

I will take your request back to the agency, but I would like to be clear in what I will be communicating to the agency. The Agency has already explained that Ms. McCarthy uses text messaging for family and other personal business, not government business and that, because personal text messages are unrelated to Agency business, they were not required to be preserved by the Agency. I am not sure how you read this statement to mean that Ms. McCarthy uses the texting function for EPA business. As I explained to Hans, this FOIA request deals with text messages on 18 specific dates, and we have already provided a very clear explanation for the "no records" response.

If what you are asking is – did Ms. McCarthy send ever any text messages that were work-related – I can ask the EPA if it would be willing to respond to this question even though it is well outside the scope of the FOIA request and does not alter the fact that the EPA did not locate any text messages on the 18 specific dates. If the EPA is willing to respond to the question of whether Ms. McCarthy ever sent any text messages that were work-related, can you represent that you will dismiss this case? As much as I think briefing would be an unnecessary use of the Court's and the parties' resources, it may be that we end up having to brief this matter rather than engage in endless rounds of clarification.

Best,
Michelle

From: Chris Horner [mailto:chornerlaw@aol.com]

Sent: Thursday, August 01, 2013 6:41 PM
To: HBader@cei.org; Lo, Michelle (USADC)
Cc: SKazman@cei.org
Subject: Re: CEI v. EPA, 13-0779 (BAH)

Dera Michelle,

Please consider the following, in addition to what Hans has written you.

EPA's obligation is to *demonstrate* 'no records'. So far they have stated it. Demonstration is found in the bills for her device.

We have obtained what EPA claims to be the relevant (texting) portions of those bills, showing extensive texting activity, so extensive that it is thoroughly implausible that Ms. McCarthy didn't text on those dates.

After we calculated the probability (1 in 7.9 sextillion), we received your statement on EPA's behalf including the portion that is the basis for the ambiguity that Hans refers to and under which we cannot dismiss, but possibly can if you clarify what it is saying:

> Ms. McCarthy uses text messaging to communicate with her family. Ms. McCarthy uses email for government business, and text messaging for family and other personal business. These personal text messages are unrelated to Agency business, and thus were not required to be preserved by the Agency.

To me this plainly implied that EPA's position is that Ms. McCarthy uses email for work and the text messaging function*only* for personal messages, and therefore EPA has not preserved her text messaging. If that is the case, and EPA state it, then the 'no records' response is sufficient and we can, I believe, dismiss.

However, another of us suggested that in context it implies something materially different, that while Ms. McCarthy uses the texting function for EPA business, on the 18 dates at issue in this matter all texts sent or received by Ms. McCarthy were personal, which is why those specific text messages are not preserved. We have not had our stats people run the probability of that but I suggest it is for all practical purposes the same as the idea that she did not text on those 18 dates.

Regardless, it may imply both but we cannot reasonably discern which, and so we ask you to state which is EPA's assertion. This is material because of EPA's obligation to demonstrate, and the sole (and most reasonable) demonstration -- her phone bills -- indicating that one of these readings is implausible, and under that reading therefore so is the 'no records' claim. The other reading is more plausible and makes the 'no records' response plausible.

So, we simply would like clarification of the ambiguous statement: over the period in question, did EPA preserve some of Ms. McCarthy's text messages -- those that someone determined were work-related -- or did they preserve none of them because they were all personal?

If we have a clear answer to this then depending on that clarification we can possibly dismiss, or we know we cannot justify doing so. We also cannot justify doing so in the absence of a clarification of an ambiguous assertion. Clarifying it is of course much simpler than further litigating this if that clarification would enable resolution and dismissal.

But as such, we need it to be a formal representation, in writing.

We look forward to your response.

Best,
Chris Horner

****
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-----Original Message-----
From: Hans Bader <HBader@cei.org>
To: Lo, Michelle (USADC) (USADC) <Michelle.Lo2@usdoj.gov>
Cc: Sam Kazman <SKazman@cei.org>; Chris Horner <chornerlaw@aol.com>
Sent: Thu, Aug 1, 2013 11:30 am
Subject: RE: CEI v. EPA, 13-0779 (BAH)

I should note that we have no objection to the proposed briefing schedule you suggested

(EPA's Motion for Summary Judgment September 16, 2013
CEI's Opposition to EPA's Motion for Summary Judgment October 16, 2013
EPA's Reply November 6, 2013).

But, hopefully, we can tie up the loose ends described below in my earlier email, and moot the need for any summary judgment motion (by resolving the case before then).

I will call you in a few minutes to try to get these things squared away.

Thanks,

Hans Bader
CEI

From: Hans Bader
Sent: Wednesday, July 31, 2013 8:25 PM
To: 'Lo, Michelle (USADC)'
Cc: Sam Kazman; Chris Horner
Subject: RE: CEI v. EPA, 13-0779 (BAH)

You are correct that I am only seeking the text messages for 18 specific dates, not the text messages in general. The reason I am asking about the text messages not being preserved in general over that period (July 9, 2009 to June 29, 2012) is just to confirm the apparent reason why the text messages don't exist for those 18 dates. Once this is understood, the query makes sense, to clarify matters and eliminate any ambiguities.

Thanks,

Hans

From: Lo, Michelle (USADC) [mailto:Michelle.Lo2@usdoj.gov]
Sent: Wednesday, July 31, 2013 6:19 PM
To: Hans Bader
Cc: Sam Kazman; Chris Horner
Subject: RE: CEI v. EPA, 13-0779 (BAH)

Dear Hans,

As I stated below and as reflected in the EPA's answer to the complaint, the Agency did not locate any text messages for the 18 dates specified by your FOIA request. As for your question about the preservation of Ms. McCarthy's text messages in general, we are now going well beyond the scope of this FOIA litigation, and I do not believe this is the appropriate forum to address this question.

Thanks,
Michelle

From: Hans Bader [mailto:HBader@cei.org]
Sent: Wednesday, July 31, 2013 4:08 PM
To: Lo, Michelle (USADC)
Cc: Sam Kazman; Chris Horner
Subject: RE: CEI v. EPA, 13-0779 (BAH)

Thanks for the clarifying details. Does this mean that her text messages in general weren't preserved, or just that the agency didn't locate any such messages for the 18 dates specified by the FOIA request? (Just tying up loose ends.)

Thanks,

Hans

From: Lo, Michelle (USADC) [mailto:Michelle.Lo2@usdoj.gov]
Sent: Wednesday, July 31, 2013 3:42 PM
To: Hans Bader
Cc: Sam Kazman; Chris Horner
Subject: RE: CEI v. EPA, 13-0779 (BAH)

Dear Hans,

Thank you for the call just now. To summarize our discussion, I've inquired with the EPA about your question below, and EPA has explained that the Agency did not locate any text messages responsive to your FOIA request at issue in this case. Moreover and in any event, Ms. McCarthy uses text messaging to communicate with her family. Ms. McCarthy uses email for government business, and text messaging for family and other personal business. These personal text messages are unrelated to Agency business, and thus were not required to be preserved by the Agency.

It's my understanding that you will be filing a stipulation of dismissal in this case. I do have one edit, which is to add "with each party to bear its own costs and fees" to the end of the stipulation. I have also made a formatting change to the signature block since my telephone number is changing. If these changes are acceptable to you, you are authorized to file the stipulation on behalf of the parties.

Thanks,
Michelle

Michelle Lo
Assistant United States Attorney
Civil Division
555 4th Street, N.W.
Washington, D.C. 20530
(202) 252-2541 – ***Please note new number***
(202) 514-8780 fax
Michelle.Lo2@usdoj.gov

From: Hans Bader [mailto:HBader@cei.org]
Sent: Monday, July 29, 2013 3:02 PM
To: Lo, Michelle (USADC)
Cc: Sam Kazman; Chris Horner
Subject: RE: CEI v. EPA, 13-0779 (BAH)

One final thing: My colleagues are curious and want an answer to the following question before we dismiss the case: How can there be no responsive records (as stated by EPA in its no-records response, and echoed in the answer), that is, no text messages, when EPA has elsewhere produced documents to us saying that Ms. McCarthy sent hundreds of text messages using her EPA device (see the attached administrative response by EPA to Chris Horner's FOIA request – the first attached file is EPA's cover letter in response to that request, and the second is its substantive response)? I'd like to get that clarification on that issue before filing the stipulation I sent earlier.

Thanks,

Hans Bader
CEI

From: Hans Bader
Sent: Monday, July 29, 2013 12:17 PM
To: 'Lo, Michelle (USADC)'
Cc: Sam Kazman
Subject: RE: CEI v. EPA, 13-0779 (BAH)

Oops. The draft stipulation I sent in the below email had the wrong docket number on it. That has been fixed in the attached draft stipulation.

From: Hans Bader
Sent: Monday, July 29, 2013 12:11 PM
To: 'Lo, Michelle (USADC)'
Cc: Sam Kazman
Subject: RE: CEI v. EPA, 13-0779 (BAH)

Chris Horner remains very skeptical of the no-records response. Nevertheless, it seems to me that it may not be worth the candle to keep litigating this particular case, as a prudential matter.

Accordingly, plaintiff would be willing to file the attached stipulation of dismissal. If this is acceptable to you, then it can be filed with the court, and it will not be necessary to set a briefing schedule.

Sorry for the delay in responding.

Thank you.

Hans Bader
Competitive Enterprise Institute
(202) 331-2278
hbader@cei.org

From: Lo, Michelle (USADC) [mailto:Michelle.Lo2@usdoj.gov]
Sent: Monday, July 29, 2013 10:11 AM
To: Hans Bader
Subject: RE: CEI v. EPA, 13-0779 (BAH)

Dear Hans:

Per Judge Howell's Standing Order, the parties are to jointly prepare and submit a report indicating whether the agency has made a final determination on compliance with the FOIA request at issue and propose a schedule for the filing of dispositive motions within 14 days after any defendant appears, or by this Friday, August 2. As you know, the EPA issued a "no records" response to CEI's FOIA request on May 31, 2013. Provided CEI intends to proceed with this litigation, we propose the following briefing

schedule:

EPA's Motion for Summary Judgment	September 16, 2013
CEI's Opposition to EPA's Motion for Summary Judgment	October 16, 2013
EPA's Reply	November 6, 2013

Please let me know if the above proposal is agreeable to you. Thank you.

Michelle Lo
Assistant United States Attorney
Civil Division
555 4th Street, N.W.
Washington, D.C. 20530
(202) 252-2541 – ***Please note new number***
(202) 514-8780 fax
Michelle.Lo2@usdoj.gov

From: Hans Bader [mailto:HBader@cei.org]
Sent: Wednesday, July 17, 2013 6:06 PM
To: Lo, Michelle (USADC)
Subject: RE: CEI v. EPA, 13-0779 (BAH)

I am still waiting to hear back. Sorry about the delay.

From: Lo, Michelle (USADC) [mailto:Michelle.Lo2@usdoj.gov]
Sent: Wednesday, July 17, 2013 6:00 PM
To: Hans Bader
Subject: RE: CEI v. EPA, 13-0779 (BAH)

Hans:

Have you had a chance to discuss with your colleagues whether CEI intends to move forward with this litigation in light of the EPA's no records response?

Thanks,
Michelle

From: Lo, Michelle (USADC)
Sent: Thursday, July 11, 2013 4:12 PM
To: Hans Bader <HBader@cei.org> (HBader@cei.org)
Subject: CEI v. EPA, 13-0779 (BAH)

Hans:

Attached is the EPA's response to CEI's FOIA request for "copies of all text messages sent by Assistant Administrator for Air and Radiation Gina McCarthy on a mobile telephone provided for her use by the Agency" that I was referring to on our call just now. Please let me know if CEI believes that further litigation of this case will be necessary in light of the EPA's no records response. Thank you.

<< File: Final Response 6005.pdf >>

Michelle Lo
Assistant United States Attorney
Civil Division

555 4th Street, N.W.
Washington, D.C. 20530
(202) 514-5134; (202) 514-8780 fax
Michelle.Lo2@usdoj.gov

From: Ketcham-Colwill, Nancy
To: Kelly, Lynn; Miller, Kevin
Cc: Weinstock, Larry
Subject: RE: CEI v. EPA, 13-0779 (BAH)
Date: Monday, July 29, 2013 7:30:42 PM

(b) (5) DPP, (b) (5) ACP, (b) (5) AWP [redacted] Nancy

From: Kelly, Lynn
Sent: Monday, July 29, 2013 5:56 PM
To: Ketcham-Colwill, Nancy; Miller, Kevin
Subject: FW: CEI v. EPA, 13-0779 (BAH)

Nancy,

(b) (5) DPP, (b) (5) ACP, (b) (5) AWP [redacted]

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

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From: Lo, Michelle (USADC) [mailto:Michelle.Lo2@usdoj.gov]
Sent: Monday, July 29, 2013 3:12 PM
To: Kelly, Lynn
Subject: FW: CEI v. EPA, 13-0779 (BAH)

Lynn: (b)(5) AWP, (b)(5) ACP [redacted] Thanks.

From: Hans Bader [mailto:HBader@cei.org]
Sent: Monday, July 29, 2013 3:02 PM
To: Lo, Michelle (USADC)
Cc: Sam Kazman; Chris Horner
Subject: RE: CEI v. EPA, 13-0779 (BAH)

One final thing: My colleagues are curious and want an answer to the following question before we dismiss the case: How can there be no responsive records (as stated by EPA in its no-records response, and echoed in the answer), that is, no text messages, when EPA has elsewhere produced documents to us saying that Ms. McCarthy sent hundreds of text messages using her EPA device (see the attached administrative response by EPA to Chris Horner's FOIA request – the first attached file is EPA's cover letter in response to that request, and the second is its substantive response)? I'd like to get that clarification on that issue before filing the stipulation I sent earlier.

Thanks,

Hans Bader
CEI

From: Hans Bader
Sent: Monday, July 29, 2013 12:17 PM
To: 'Lo, Michelle (USADC)'
Cc: Sam Kazman
Subject: RE: CEI v. EPA, 13-0779 (BAH)

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From: Hans Bader
Sent: Monday, July 29, 2013 12:11 PM
To: 'Lo, Michelle (USADC)'
Cc: Sam Kazman
Subject: RE: CEI v. EPA, 13-0779 (BAH)

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Accordingly, plaintiff would be willing to file the attached stipulation of dismissal. If this is acceptable to you, then it can be filed with the court, and it will not be necessary to set a briefing schedule.

Sorry for the delay in responding.

Thank you.

Hans Bader
Competitive Enterprise Institute
(202) 331-2278
hbader@cei.org

From: Lo, Michelle (USADC) [mailto:Michelle.Lo2@usdoj.gov]
Sent: Monday, July 29, 2013 10:11 AM
To: Hans Bader
Subject: RE: CEI v. EPA, 13-0779 (BAH)

Dear Hans:

Per Judge Howell's Standing Order, the parties are to jointly prepare and submit a report indicating whether the agency has made a final determination on compliance with the FOIA request at issue and propose a schedule for the filing of dispositive motions within 14 days after any defendant appears, or by this Friday, August 2. As you know, the EPA issued a "no records" response to CEI's FOIA request on May 31, 2013. Provided CEI intends to proceed with this litigation, we propose the following briefing schedule:

EPA's Motion for Summary Judgment	September 16, 2013
CEI's Opposition to EPA's Motion for Summary Judgment	October 16, 2013
EPA's Reply	November 6, 2013

Please let me know if the above proposal is agreeable to you. Thank you.

Michelle Lo
Assistant United States Attorney
Civil Division
555 4th Street, N.W.
Washington, D.C. 20530
(202) 252-2541 – ***Please note new number***
(202) 514-8780 fax
Michelle.Lo2@usdoj.gov

From: Hans Bader [mailto:HBader@cei.org]
Sent: Wednesday, July 17, 2013 6:06 PM
To: Lo, Michelle (USADC)
Subject: RE: CEI v. EPA, 13-0779 (BAH)

I am still waiting to hear back. Sorry about the delay.

From: Lo, Michelle (USADC) [mailto:Michelle.Lo2@usdoj.gov]
Sent: Wednesday, July 17, 2013 6:00 PM
To: Hans Bader

Subject: RE: CEI v. EPA, 13-0779 (BAH)

Hans:

Have you had a chance to discuss with your colleagues whether CEI intends to move forward with this litigation in light of the EPA's no records response?

Thanks,
Michelle

From: Lo, Michelle (USADC)
Sent: Thursday, July 11, 2013 4:12 PM
To: Hans Bader <HBader@cei.org> (HBader@cei.org)
Subject: CEI v. EPA, 13-0779 (BAH)

Hans:

Attached is the EPA's response to CEI's FOIA request for "copies of all text messages sent by Assistant Administrator for Air and Radiation Gina McCarthy on a mobile telephone provided for her use by the Agency" that I was referring to on our call just now. Please let me know if CEI believes that further litigation of this case will be necessary in light of the EPA's no records response. Thank you.

<< File: Final Response 6005.pdf >>

Michelle Lo
Assistant United States Attorney
Civil Division
555 4th Street, N.W.
Washington, D.C. 20530
(202) 514-5134; (202) 514-8780 fax
Michelle.Lo2@usdoj.gov

From: Kelly, Lynn
To: Lo, Michelle (USADC)
Subject: RE: CEI v. EPA, 13-0779 (BAH)
Date: Monday, July 29, 2013 5:09:00 PM

(b) (5) DPP, (b) (5) ACP, (b) (5) AWP [redacted] Will be in touch tomorrow. Thanks!

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.

From: Lo, Michelle (USADC) [mailto:Michelle.Lo2@usdoj.gov]
Sent: Monday, July 29, 2013 4:50 PM
To: Kelly, Lynn
Subject: RE: CEI v. EPA, 13-0779 (BAH)

(b) (5) DPP, (b) (5) ACP, (b) (5) AWP [redacted]. Thanks.

From: Kelly, Lynn [mailto:Kelly.Lynn@epa.gov]
Sent: Monday, July 29, 2013 4:31 PM
To: Lo, Michelle (USADC)
Subject: RE: CEI v. EPA, 13-0779 (BAH)

Michelle,

(b) (5) DPP, (b) (5) ACP, (b) (5) AWP [redacted]

Lynn Kelly | US EPA | Office of General Counsel | 1200 Pennsylvania Ave., NW | ARN, Mail Code 2377A

| Washington DC 20460 | phone: (202) 564-3266

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From: Lo, Michelle (USADC) [mailto:Michelle.Lo2@usdoj.gov]
Sent: Monday, July 29, 2013 3:12 PM
To: Kelly, Lynn
Subject: FW: CEI v. EPA, 13-0779 (BAH)

Lynn: (b)(5) AWP, (b)(5) ACP [redacted] Thanks.

From: Hans Bader [mailto:HBader@cei.org]
Sent: Monday, July 29, 2013 3:02 PM
To: Lo, Michelle (USADC)
Cc: Sam Kazman; Chris Horner
Subject: RE: CEI v. EPA, 13-0779 (BAH)

One final thing: My colleagues are curious and want an answer to the following question before we dismiss the case: How can there be no responsive records (as stated by EPA in its no-records response, and echoed in the answer), that is, no text messages, when EPA has elsewhere produced documents to us saying that Ms. McCarthy sent hundreds of text messages using her EPA device (see the attached administrative response by EPA to Chris Horner's FOIA request – the first attached file is EPA's cover letter in response to that request, and the second is its substantive response)? I'd like to get that clarification on that issue before filing the stipulation I sent earlier.

Thanks,

Hans Bader
CEI

From: Hans Bader
Sent: Monday, July 29, 2013 12:17 PM
To: 'Lo, Michelle (USADC)'
Cc: Sam Kazman
Subject: RE: CEI v. EPA, 13-0779 (BAH)

Oops. The draft stipulation I sent in the below email had the wrong docket number on it. That has been fixed in the attached draft stipulation.

From: Hans Bader
Sent: Monday, July 29, 2013 12:11 PM
To: 'Lo, Michelle (USADC)'
Cc: Sam Kazman
Subject: RE: CEI v. EPA, 13-0779 (BAH)

Chris Horner remains very skeptical of the no-records response. Nevertheless, it seems to me that it may not be worth the candle to keep litigating this particular case, as a prudential matter.

Accordingly, plaintiff would be willing to file the attached stipulation of dismissal. If this is acceptable to you, then it can be filed with the court, and it will not be necessary to set a briefing schedule.

Sorry for the delay in responding.

Thank you.

Hans Bader
Competitive Enterprise Institute
(202) 331-2278
hbader@cei.org

From: Lo, Michelle (USADC) [mailto:Michelle.Lo2@usdoj.gov]
Sent: Monday, July 29, 2013 10:11 AM
To: Hans Bader
Subject: RE: CEI v. EPA, 13-0779 (BAH)

Dear Hans:

Per Judge Howell's Standing Order, the parties are to jointly prepare and submit a report indicating whether the agency has made a final determination on compliance with the FOIA request at issue and propose a schedule for the filing of dispositive motions within 14 days after any defendant appears, or by this Friday, August 2. As you know, the EPA issued a "no records" response to CEI's FOIA request on May 31, 2013. Provided CEI intends to proceed with this litigation, we propose the following briefing schedule:

EPA's Motion for Summary Judgment	September 16, 2013
CEI's Opposition to EPA's Motion for Summary Judgment	October 16, 2013
EPA's Reply	November 6, 2013

Please let me know if the above proposal is agreeable to you. Thank you.

Michelle Lo
Assistant United States Attorney
Civil Division
555 4th Street, N.W.
Washington, D.C. 20530
(202) 252-2541 – ***Please note new number***
(202) 514-8780 fax
Michelle.Lo2@usdoj.gov

From: Hans Bader [mailto:HBader@cei.org]
Sent: Wednesday, July 17, 2013 6:06 PM
To: Lo, Michelle (USADC)
Subject: RE: CEI v. EPA, 13-0779 (BAH)

I am still waiting to hear back. Sorry about the delay.

From: Lo, Michelle (USADC) [mailto:Michelle.Lo2@usdoj.gov]
Sent: Wednesday, July 17, 2013 6:00 PM
To: Hans Bader
Subject: RE: CEI v. EPA, 13-0779 (BAH)

Hans:

Have you had a chance to discuss with your colleagues whether CEI intends to move forward with this litigation in light of the EPA's no records response?

Thanks,
Michelle

From: Lo, Michelle (USADC)
Sent: Thursday, July 11, 2013 4:12 PM
To: Hans Bader <HBader@cei.org> (HBader@cei.org)
Subject: CEI v. EPA, 13-0779 (BAH)

Hans:

Attached is the EPA's response to CEI's FOIA request for "copies of all text messages sent by Assistant Administrator for Air and Radiation Gina McCarthy on a mobile telephone provided for her use by the Agency" that I was referring to on our call just now. Please let me know if CEI believes that further litigation of this case will be necessary in light of the EPA's no records response. Thank you.

<< File: Final Response 6005.pdf >>

Michelle Lo
Assistant United States Attorney
Civil Division
555 4th Street, N.W.
Washington, D.C. 20530
(202) 514-5134; (202) 514-8780 fax
Michelle.Lo2@usdoj.gov

From: Kelly, Lynn
To: Lo, Michelle (USADC)
Subject: RE: CEI v. EPA, 13-0779 (BAH)
Date: Monday, July 29, 2013 3:13:00 PM

Yes! I think it goes to both, but you can just use kelly.lynn@epa.gov. (b) (5) DPP, (b) (5) ACP, (b) (5) AWP [redacted]

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

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From: Lo, Michelle (USADC) [mailto:Michelle.Lo2@usdoj.gov]
Sent: Monday, July 29, 2013 3:11 PM
To: Kelly, Lynn
Subject: FW: CEI v. EPA, 13-0779 (BAH)

Are you still getting emails on the epamail.epa.gov address?

From: Lo, Michelle (USADC)
Sent: Monday, July 29, 2013 12:25 PM
To: Lynn Kelly (Kelly.Lynn@epamail.epa.gov)
Subject: FW: CEI v. EPA, 13-0779 (BAH)

Lynn,

(b) (5) DPP, (b) (5) ACP, (b) (5) AWP [redacted] Thanks.

Michelle

From: Hans Bader [mailto:HBader@cei.org]
Sent: Monday, July 29, 2013 12:17 PM
To: Lo, Michelle (USADC)
Cc: Sam Kazman
Subject: RE: CEI v. EPA, 13-0779 (BAH)

Oops. The draft stipulation I sent in the below email had the wrong docket number on it. That has been fixed in the attached draft stipulation.

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Sent: Monday, July 29, 2013 12:11 PM
To: 'Lo, Michelle (USADC)'
Cc: Sam Kazman

Subject: RE: CEI v. EPA, 13-0779 (BAH)

Chris Horner remains very skeptical of the no-records response. Nevertheless, it seems to me that it may not be worth the candle to keep litigating this particular case, as a prudential matter.

Accordingly, plaintiff would be willing to file the attached stipulation of dismissal. If this is acceptable to you, then it can be filed with the court, and it will not be necessary to set a briefing schedule.

Sorry for the delay in responding.

Thank you.

Hans Bader
Competitive Enterprise Institute
(202) 331-2278
hbader@cei.org

From: Lo, Michelle (USADC) [mailto:Michelle.Lo2@usdoj.gov]
Sent: Monday, July 29, 2013 10:11 AM
To: Hans Bader
Subject: RE: CEI v. EPA, 13-0779 (BAH)

Dear Hans:

Per Judge Howell's Standing Order, the parties are to jointly prepare and submit a report indicating whether the agency has made a final determination on compliance with the FOIA request at issue and propose a schedule for the filing of dispositive motions within 14 days after any defendant appears, or by this Friday, August 2. As you know, the EPA issued a "no records" response to CEI's FOIA request on May 31, 2013. Provided CEI intends to proceed with this litigation, we propose the following briefing schedule:

EPA's Motion for Summary Judgment	September 16, 2013
CEI's Opposition to EPA's Motion for Summary Judgment	October 16, 2013
EPA's Reply	November 6, 2013

Please let me know if the above proposal is agreeable to you. Thank you.

Michelle Lo
Assistant United States Attorney
Civil Division
555 4th Street, N.W.
Washington, D.C. 20530
(202) 252-2541 – ***Please note new number***
(202) 514-8780 fax
Michelle.Lo2@usdoj.gov

From: Hans Bader [mailto:HBader@cei.org]
Sent: Wednesday, July 17, 2013 6:06 PM
To: Lo, Michelle (USADC)
Subject: RE: CEI v. EPA, 13-0779 (BAH)

I am still waiting to hear back. Sorry about the delay.

From: Lo, Michelle (USADC) [mailto:Michelle.Lo2@usdoj.gov]
Sent: Wednesday, July 17, 2013 6:00 PM
To: Hans Bader
Subject: RE: CEI v. EPA, 13-0779 (BAH)

Hans:

Have you had a chance to discuss with your colleagues whether CEI intends to move forward with this litigation in light of the EPA's no records response?

Thanks,
Michelle

From: Lo, Michelle (USADC)
Sent: Thursday, July 11, 2013 4:12 PM
To: Hans Bader <HBader@cei.org> (HBader@cei.org)
Subject: CEI v. EPA, 13-0779 (BAH)

Hans:

Attached is the EPA's response to CEI's FOIA request for "copies of all text messages sent by Assistant Administrator for Air and Radiation Gina McCarthy on a mobile telephone provided for her use by the Agency" that I was referring to on our call just now. Please let me know if CEI believes that further litigation of this case will be necessary in light of the EPA's no records response. Thank you.

<< File: Final Response 6005.pdf >>

Michelle Lo
Assistant United States Attorney
Civil Division
555 4th Street, N.W.
Washington, D.C. 20530
(202) 514-5134; (202) 514-8780 fax
Michelle.Lo2@usdoj.gov

From: Anderson, Cindy
To: Kelly, Lynn
Subject: RE: CEI v. EPA, 13-0779 (BAH)
Date: Wednesday, December 04, 2013 5:16:32 PM

Thanks a bunch!

Cindy
564-2690

From: Kelly, Lynn
Sent: Wednesday, December 04, 2013 5:16 PM
To: Anderson, Cindy
Subject: FW: CEI v. EPA, 13-0779 (BAH)

(b) (5) DPP, (b) (5) ACP, (b) (5) AWP [redacted]

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: Lo, Michelle (USADC) [mailto:Michelle.Lo2@usdoj.gov]
Sent: Monday, September 09, 2013 4:25 PM
To: Kelly, Lynn
Subject: FW: CEI v. EPA, 13-0779 (BAH)

(b) (5) DPP, (b) (5) ACP, (b) (5) AWP [redacted]

From: Chris Horner [mailto:chornerlaw@aol.com]
Sent: Monday, September 09, 2013 4:21 PM
To: Lo, Michelle (USADC); HBader@cei.org
Cc: SKazman@cei.org
Subject: Re: CEI v. EPA, 13-0779 (BAH)

I'm sorry but I keep reading two meanings in most of these messages. Please confirm you are saying the approximately three-year period from July 9, 2009 to June 29, 2012?

Best,
Chris Horner

****
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: Lo, Michelle (USADC) (USADC) <Michelle.Lo2@usdoj.gov>
To: Hans Bader <HBader@cei.org>; Chris Horner <chornerlaw@aol.com>
Cc: Sam Kazman <SKazman@cei.org>
Sent: Mon, Sep 9, 2013 4:17 pm
Subject: RE: CEI v. EPA, 13-0779 (BAH)

Yes, I mean all the dates between the period from July 9, 2009, to June 29, 2012.

From: Hans Bader [mailto:HBader@cei.org]
Sent: Monday, September 09, 2013 3:51 PM
To: Lo, Michelle (USADC); Chris Horner
Cc: Sam Kazman
Subject: RE: CEI v. EPA, 13-0779 (BAH)

Thanks. By "encompassing," you mean not just the 18 dates, but also the interstitial dates between them, right? (When we spoke over the phone, I did not think in detail over what was meant by the words "entire period" when you said at that time, "none of her texts over the entire period . . .", although this is still helpful). Thanks.

From: Lo, Michelle (USADC) [mailto:Michelle.Lo2@usdoj.gov]
Sent: Monday, September 9, 2013 3:46 PM
To: Chris Horner; Hans Bader
Cc: Sam Kazman
Subject: RE: CEI v. EPA, 13-0779 (BAH)

Chris,

I was not able to reach you just now, but I did speak with Hans and had a beneficial discussion with him. Although the requested clarification in your August 1 email goes beyond the scope of CEI's FOIA request, which seeks only text messages sent by Ms. McCarthy on the 18 specific dates, the EPA is willing to respond in the interest of reaching an amicable resolution. The agency's position is as follows:

To the very best of her recollection, Ms. McCarthy used the texting function on her EPA phone for personal purposes only and not to conduct Agency business. None of her texts over the period encompassing the 18 specific dates at issue in CEI's FOIA request (July 9, 2009, to June 29, 2012) were preserved.

We believe this should clarify any remaining ambiguity and obviate the need for further litigation. I am of course available to discuss further if you think that would be helpful. I would appreciate it if you can let me know by tomorrow if this resolves all outstanding issues.

Thanks,
Michelle

From: Lo, Michelle (USADC)
Sent: Monday, September 09, 2013 11:28 AM
To: 'Chris Horner'; HBader@cei.org
Cc: SKazman@cei.org
Subject: RE: CEI v. EPA, 13-0779 (BAH)

Yes, I think there is progress on this issue, and it would be helpful for us to have a brief discussion. Please let me know when you are available. Thanks.

From: Chris Horner [mailto:chornerlaw@aol.com]
Sent: Monday, September 09, 2013 11:24 AM
To: Lo, Michelle (USADC); HBader@cei.org

Cc: SKazman@cei.org
Subject: Re: CEI v. EPA, 13-0779 (BAH)

The below is where I think things were when we left off. FYI

From my 8/01 email:

> we have only sought one clear statement, I *think* you may just clarified the ambiguity as explained below. But if you plainly state what is implied we can dismiss.
> Below you more strongly imply what seemed the implication before, but is still not stated outright with no room for misunderstanding. That is that Ms. McCarthy *only* used the texting function on her EPA phone for personal messages; and because she never used it for work this is why EPA has preserved none of her texts.
> If that is what you were saying, would you please confirm that and that this is also EPA's position. In that case, you need not take any further questions to EPA and I accept the 'no records' response as sufficient such that we will dismiss.

Is there any progress on this?

Best,
Chris Horner

-----Original Message-----
From: Lo, Michelle (USADC) (USADC) <Michelle.Lo2@usdoj.gov>
To: Hans Bader <HBader@cei.org>; Chris Horner <chornerlaw@aol.com>
Cc: Sam Kazman <SKazman@cei.org>
Sent: Fri, Aug 16, 2013 1:51 pm
Subject: RE: CEI v. EPA, 13-0779 (BAH)

My apologies for the delay, I am still waiting to hear from EPA. I think there are availability issues due to this being August, but I will get back to you as soon as I can.

From: Hans Bader [mailto:HBader@cei.org]
Sent: Friday, August 16, 2013 1:48 PM
To: Lo, Michelle (USADC); Chris Horner
Cc: Sam Kazman
Subject: RE: CEI v. EPA, 13-0779 (BAH)

Thanks. Hopefully, you will hear soon from EPA (your email below suggested you would hear from EPA by the week of August 5, which has now come and gone).

From: Lo, Michelle (USADC) [mailto:Michelle.Lo2@usdoj.gov]
Sent: Friday, August 02, 2013 4:09 PM
To: Chris Horner; Hans Bader
Cc: Sam Kazman
Subject: RE: CEI v. EPA, 13-0779 (BAH)

Thanks, Chris. It is looking like I will not be able to get a response from the Agency today (due to availability issues), so I think it makes most sense for us to go ahead and file a status report with the proposed briefing schedule so we are in compliance with the Court's standing order. I should hear from EPA by early next week, so we can continue our discussions at that time. If the attached draft report is acceptable, let me know and I can take care of the filing.

From: chornerlaw@aol.com [mailto:chornerlaw@aol.com]

Sent: Friday, August 02, 2013 2:54 PM
To: Lo, Michelle (USADC); hbader@cei.org
Cc: skazman@cei.org
Subject: RE: CEI v. EPA, 13-0779 (BAH)

Yes I will, am in a mtg 3-5-something but will be able to email I think, cch
Sent from my Verizon Wireless 4G LTE smartphone

"Lo, Michelle (USADC)" wrote:
Dear Chris,

I am waiting to hear back from the EPA regarding your follow-up inquiry below. I am hopeful that I will have a response to you today, but it may not be until around 5 pm due to various individuals' availability. Will you be available then so we can figure out whether we will be filing a dismissal or a proposed briefing schedule at that time?

Thanks,
Michelle

From: chornerlaw@aol.com [mailto:chornerlaw@aol.com]
Sent: Thursday, August 01, 2013 10:05 PM
To: Lo, Michelle (USADC); hbader@cei.org
Cc: skazman@cei.org
Subject: RE: CEI v. EPA, 13-0779 (BAH)

Dear Michelle,
Rather than endless rounds of clarification, though we have only sought one clear statement, I *think* you may just clarified the ambiguity as explained below. But if you plainly state what is implied we can dismiss.
Below you more strongly imply what seemed the implication before, but is still not stated outright with no room for misunderstanding. That is that Ms. McCarthy *only* used the texting function on her EPA phone for personal messages; and because she never used it for work this is why EPA has preserved none of her texts.
If that is what you were saying, would you please confirm that and that this is also EPA's position. In that case, you need not take any further questions to EPA and I accept the 'no records' response as sufficient such that we will dismiss.
I look forward to your reply.
Best,
Chris
Sent from my Verizon Wireless 4G LTE smartphone

"Lo, Michelle (USADC)" wrote:
Chris,

I will take your request back to the agency, but I would like to be clear in what I will be communicating to the agency. The Agency has already explained that Ms. McCarthy uses text messaging for family and other personal business, not government business and that, because personal text messages are unrelated to Agency business, they were not required to be preserved by the Agency. I am not sure how you read this statement to mean that Ms. McCarthy uses the texting function for EPA business. As I explained to Hans, this FOIA request deals with text messages on 18 specific dates, and we have already provided a very clear explanation for the "no records" response.

If what you are asking is – did Ms. McCarthy send ever any text messages that were work-related – I can

ask the EPA if it would be willing to respond to this question even though it is well outside the scope of the FOIA request and does not alter the fact that the EPA did not locate any text messages on the 18 specific dates. If the EPA is willing to respond to the question of whether Ms. McCarthy ever sent any text messages that were work-related, can you represent that you will dismiss this case? As much as I think briefing would be an unnecessary use of the Court's and the parties' resources, it may be that we end up having to brief this matter rather than engage in endless rounds of clarification.

Best,
Michelle

From: Chris Horner [mailto:chornerlaw@aol.com]
Sent: Thursday, August 01, 2013 6:41 PM
To: HBader@cei.org; Lo, Michelle (USADC)
Cc: SKazman@cei.org
Subject: Re: CEI v. EPA, 13-0779 (BAH)

Dera Michelle,

Please consider the following, in addition to what Hans has written you.

EPA's obligation is to *demonstrate* 'no records'. So far they have stated it. Demonstration is found in the bills for her device.

We have obtained what EPA claims to be the relevant (texting) portions of those bills, showing extensive texting activity, so extensive that it is thoroughly implausible that Ms. McCarthy didn't text on those dates.

After we calculated the probability (1 in 7.9 sextillion), we received your statement on EPA's behalf including the portion that is the basis for the ambiguity that Hans refers to and under which we cannot dismiss, but possibly can if you clarify what it is saying:

> Ms. McCarthy uses text messaging to communicate with her family. Ms. McCarthy uses email for government business, and text messaging for family and other personal business. These personal text messages are unrelated to Agency business, and thus were not required to be preserved by the Agency.

To me this plainly implied that EPA's position is that Ms. McCarthy uses email for work and the text messaging function*only* for personal messages, and therefore EPA has not preserved her text messaging. If that is the case, and EPA state it, then the 'no records' response is sufficient and we can, I believe, dismiss.

However, another of us suggested that in context it implies something materially different, that while Ms. McCarthy uses the texting function for EPA business, on the 18 dates at issue in this matter all texts sent or received by Ms. McCarthy were personal, which is why those specific text messages are not preserved. We have not had our stats people run the probability of that but I suggest it is for all practical purposes the same as the idea that she did not text on those 18 dates.

Regardless, it may imply both but we cannot reasonably discern which, and so we ask you to state which is EPA's assertion. This is material because of EPA's obligation to demonstrate, and the sole (and most reasonable) demonstration -- her phone bills -- indicating that one of these readings is implausible, and under that reading therefore so is the 'no records' claim. The other reading is more plausible and makes the 'no records' response plausible.

So, we simply would like clarification of the ambiguous statement: over the period in question, did EPA preserve some of Ms. McCarthy's text messages -- those that someone determined were work-related -- or did they preserve none of them because they were all personal?

If we have a clear answer to this then depending on that clarification we can possibly dismiss, or we know

we cannot justify doing so. We also cannot justify doing so in the absence of a clarification of an ambiguous assertion. Clarifying it is of course much simpler than further litigating this if that clarification would enable resolution and dismissal.

But as such, we need it to be a formal representation, in writing.

We look forward to your response.

Best,
Chris Horner

****
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-----Original Message-----
From: Hans Bader <HBader@cei.org>
To: Lo, Michelle (USADC) (USADC) <Michelle.Lo2@usdoj.gov>
Cc: Sam Kazman <SKazman@cei.org>; Chris Horner <chornerlaw@aol.com>
Sent: Thu, Aug 1, 2013 11:30 am
Subject: RE: CEI v. EPA, 13-0779 (BAH)

I should note that we have no objection to the proposed briefing schedule you suggested

(EPA's Motion for Summary Judgment September 16, 2013
CEI's Opposition to EPA's Motion for Summary Judgment October 16, 2013
EPA's Reply November 6, 2013).

But, hopefully, we can tie up the loose ends described below in my earlier email, and moot the need for any summary judgment motion (by resolving the case before then).

I will call you in a few minutes to try to get these things squared away.

Thanks,

Hans Bader
CEI

From: Hans Bader
Sent: Wednesday, July 31, 2013 8:25 PM
To: 'Lo, Michelle (USADC)'
Cc: Sam Kazman; Chris Horner
Subject: RE: CEI v. EPA, 13-0779 (BAH)

You are correct that I am only seeking the text messages for 18 specific dates, not the text messages in general. The reason I am asking about the text messages not being preserved in general over that period (July 9, 2009 to June 29, 2012) is just to confirm the apparent reason why the text messages don't exist for those 18 dates. Once this is understood, the query makes sense, to clarify matters and eliminate any ambiguities.

Thanks,

Hans

From: Lo, Michelle (USADC) [mailto:Michelle.Lo2@usdoj.gov]
Sent: Wednesday, July 31, 2013 6:19 PM
To: Hans Bader
Cc: Sam Kazman; Chris Horner
Subject: RE: CEI v. EPA, 13-0779 (BAH)

Dear Hans,

As I stated below and as reflected in the EPA's answer to the complaint, the Agency did not locate any text messages for the 18 dates specified by your FOIA request. As for your question about the preservation of Ms. McCarthy's text messages in general, we are now going well beyond the scope of this FOIA litigation, and I do not believe this is the appropriate forum to address this question.

Thanks,
Michelle

From: Hans Bader [mailto:HBader@cei.org]
Sent: Wednesday, July 31, 2013 4:08 PM
To: Lo, Michelle (USADC)
Cc: Sam Kazman; Chris Horner
Subject: RE: CEI v. EPA, 13-0779 (BAH)

Thanks for the clarifying details. Does this mean that her text messages in general weren't preserved, or just that the agency didn't locate any such messages for the 18 dates specified by the FOIA request? (Just tying up loose ends.)

Thanks,

Hans

From: Lo, Michelle (USADC) [mailto:Michelle.Lo2@usdoj.gov]
Sent: Wednesday, July 31, 2013 3:42 PM
To: Hans Bader
Cc: Sam Kazman; Chris Horner
Subject: RE: CEI v. EPA, 13-0779 (BAH)

Dear Hans,

Thank you for the call just now. To summarize our discussion, I've inquired with the EPA about your question below, and EPA has explained that the Agency did not locate any text messages responsive to your FOIA request at issue in this case. Moreover and in any event, Ms. McCarthy uses text messaging to communicate with her family. Ms. McCarthy uses email for government business, and text messaging for family and other personal business. These personal text messages are unrelated to Agency business, and thus were not required to be preserved by the Agency.

It's my understanding that you will be filing a stipulation of dismissal in this case. I do have one edit, which is to add "with each party to bear its own costs and fees" to the end of the stipulation. I have also made a formatting change to the signature block since my telephone number is changing. If these changes are acceptable to you, you are authorized to file the stipulation on behalf of the parties.

Thanks,
Michelle

Michelle Lo
Assistant United States Attorney

Civil Division
555 4th Street, N.W.
Washington, D.C. 20530
(202) 252-2541 – ***Please note new number***
(202) 514-8780 fax
Michelle.Lo2@usdoj.gov

From: Hans Bader [mailto:HBader@cei.org]
Sent: Monday, July 29, 2013 3:02 PM
To: Lo, Michelle (USADC)
Cc: Sam Kazman; Chris Horner
Subject: RE: CEI v. EPA, 13-0779 (BAH)

One final thing: My colleagues are curious and want an answer to the following question before we dismiss the case: How can there be no responsive records (as stated by EPA in its no-records response, and echoed in the answer), that is, no text messages, when EPA has elsewhere produced documents to us saying that Ms. McCarthy sent hundreds of text messages using her EPA device (see the attached administrative response by EPA to Chris Horner's FOIA request – the first attached file is EPA's cover letter in response to that request, and the second is its substantive response)? I'd like to get that clarification on that issue before filing the stipulation I sent earlier.

Thanks,

Hans Bader
CEI

From: Hans Bader
Sent: Monday, July 29, 2013 12:17 PM
To: 'Lo, Michelle (USADC)'
Cc: Sam Kazman
Subject: RE: CEI v. EPA, 13-0779 (BAH)

Oops. The draft stipulation I sent in the below email had the wrong docket number on it. That has been fixed in the attached draft stipulation.

From: Hans Bader
Sent: Monday, July 29, 2013 12:11 PM
To: 'Lo, Michelle (USADC)'
Cc: Sam Kazman
Subject: RE: CEI v. EPA, 13-0779 (BAH)

Chris Horner remains very skeptical of the no-records response. Nevertheless, it seems to me that it may not be worth the candle to keep litigating this particular case, as a prudential matter.

Accordingly, plaintiff would be willing to file the attached stipulation of dismissal. If this is acceptable to you, then it can be filed with the court, and it will not be necessary to set a briefing schedule.

Sorry for the delay in responding.

Thank you.

Hans Bader
Competitive Enterprise Institute
(202) 331-2278
hbader@cei.org

From: Lo, Michelle (USADC) [mailto:Michelle.Lo2@usdoj.gov]
Sent: Monday, July 29, 2013 10:11 AM
To: Hans Bader
Subject: RE: CEI v. EPA, 13-0779 (BAH)

Dear Hans:

Per Judge Howell's Standing Order, the parties are to jointly prepare and submit a report indicating whether the agency has made a final determination on compliance with the FOIA request at issue and propose a schedule for the filing of dispositive motions within 14 days after any defendant appears, or by this Friday, August 2. As you know, the EPA issued a "no records" response to CEI's FOIA request on May 31, 2013. Provided CEI intends to proceed with this litigation, we propose the following briefing schedule:

EPA's Motion for Summary Judgment	September 16, 2013
CEI's Opposition to EPA's Motion for Summary Judgment	October 16, 2013
EPA's Reply	November 6, 2013

Please let me know if the above proposal is agreeable to you. Thank you.

Michelle Lo
Assistant United States Attorney
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555 4th Street, N.W.
Washington, D.C. 20530
(202) 252-2541 – ***Please note new number***
(202) 514-8780 fax
Michelle.Lo2@usdoj.gov

From: Hans Bader [mailto:HBader@cei.org]
Sent: Wednesday, July 17, 2013 6:06 PM
To: Lo, Michelle (USADC)
Subject: RE: CEI v. EPA, 13-0779 (BAH)

I am still waiting to hear back. Sorry about the delay.

From: Lo, Michelle (USADC) [mailto:Michelle.Lo2@usdoj.gov]
Sent: Wednesday, July 17, 2013 6:00 PM
To: Hans Bader
Subject: RE: CEI v. EPA, 13-0779 (BAH)

Hans:

Have you had a chance to discuss with your colleagues whether CEI intends to move forward with this litigation in light of the EPA's no records response?

Thanks,
Michelle

From: Lo, Michelle (USADC)
Sent: Thursday, July 11, 2013 4:12 PM
To: Hans Bader <HBader@cei.org> (HBader@cei.org)
Subject: CEI v. EPA, 13-0779 (BAH)

Hans:

Attached is the EPA's response to CEI's FOIA request for "copies of all text messages sent by Assistant Administrator for Air and Radiation Gina McCarthy on a mobile telephone provided for her use by the Agency" that I was referring to on our call just now. Please let me know if CEI believes that further litigation of this case will be necessary in light of the EPA's no records response. Thank you.

<< File: Final Response 6005.pdf >>

Michelle Lo
Assistant United States Attorney
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555 4th Street, N.W.
Washington, D.C. 20530
(202) 514-5134; (202) 514-8780 fax
Michelle.Lo2@usdoj.gov

****
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-----Original Message-----
From: Lo, Michelle (USADC) (USADC) <Michelle.Lo2@usdoj.gov>
To: Chris Horner <chornerlaw@aol.com>; HBader <HBader@cei.org>
Cc: SKazman <SKazman@cei.org>
Sent: Mon, Sep 9, 2013 11:20 am
Subject: RE: CEI v. EPA, 13-0779 (BAH)

Chris,

Yes, I just tried to give you a call, but we had a poor connection. Are you able to give me a call at 202-252-2541 at 11:30 am or any time after 1 pm that is convenient for you? I'd like to see if it's possible for us to resolve the outstanding issues, and I think a discussion would be helpful.

Thanks,
Michelle

From: Chris Horner [mailto:chornerlaw@aol.com]
Sent: Monday, September 09, 2013 11:18 AM
To: Lo, Michelle (USADC); HBader@cei.org
Cc: SKazman@cei.org
Subject: Re: CEI v. EPA, 13-0779 (BAH)

Michelle, I just received a call from you but it was cutting in and out then cut off. Are we all on for a call and what is the issue. Let's set a time. Thanks.

Best,
Chris Horner

****
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-----Original Message-----
From: Lo, Michelle (USADC) (USADC) <Michelle.Lo2@usdoj.gov>
To: Hans Bader <HBader@cei.org>; Chris Horner <chornerlaw@aol.com>
Cc: Sam Kazman <SKazman@cei.org>
Sent: Fri, Sep 6, 2013 4:23 pm
Subject: RE: CEI v. EPA, 13-0779 (BAH)

Chris and Hans,

With August behind us, I have finally had a chance to discuss with the EPA and think it would be worthwhile for the parties to have another discussion to determine whether we are able to resolve this case without further litigation. Would either or both of you be available for a telephone call on Monday?

Thanks,
Michelle

From: Lo, Michelle (USADC)
Sent: Friday, August 16, 2013 1:51 PM
To: 'Hans Bader'; Chris Horner
Cc: Sam Kazman
Subject: RE: CEI v. EPA, 13-0779 (BAH)

My apologies for the delay, I am still waiting to hear from EPA. I think there are availability issues due to this being August, but I will get back to you as soon as I can.

From: Hans Bader [mailto:HBader@cei.org]
Sent: Friday, August 16, 2013 1:48 PM
To: Lo, Michelle (USADC); Chris Horner
Cc: Sam Kazman
Subject: RE: CEI v. EPA, 13-0779 (BAH)

Thanks. Hopefully, you will hear soon from EPA (your email below suggested you would hear from EPA by the week of August 5, which has now come and gone).

From: Lo, Michelle (USADC) [mailto:Michelle.Lo2@usdoj.gov]
Sent: Friday, August 02, 2013 4:09 PM
To: Chris Horner; Hans Bader
Cc: Sam Kazman
Subject: RE: CEI v. EPA, 13-0779 (BAH)

Thanks, Chris. It is looking like I will not be able to get a response from the Agency today (due to availability issues), so I think it makes most sense for us to go ahead and file a status report with the proposed briefing schedule so we are in compliance with the Court's standing order. I should hear from EPA by early next week, so we can continue our discussions at that time. If the attached draft report is acceptable, let me know and I can take care of the filing.

From: chornerlaw@aol.com [mailto:chornerlaw@aol.com]
Sent: Friday, August 02, 2013 2:54 PM
To: Lo, Michelle (USADC); hbader@cei.org
Cc: skazman@cei.org
Subject: RE: CEI v. EPA, 13-0779 (BAH)

Yes I will, am in a mtg 3-5-something but will be able to email I think, cch
Sent from my Verizon Wireless 4G LTE smartphone

"Lo, Michelle (USADC)" wrote:
Dear Chris,

I am waiting to hear back from the EPA regarding your follow-up inquiry below. I am hopeful that I will have a response to you today, but it may not be until around 5 pm due to various individuals' availability. Will you be available then so we can figure out whether we will be filing a dismissal or a proposed briefing schedule at that time?

Thanks,
Michelle

From: chornerlaw@aol.com [mailto:chornerlaw@aol.com]
Sent: Thursday, August 01, 2013 10:05 PM
To: Lo, Michelle (USADC); hbader@cei.org
Cc: skazman@cei.org
Subject: RE: CEI v. EPA, 13-0779 (BAH)

Dear Michelle,
Rather than endless rounds of clarification, though we have only sought one clear statement, I *think* you may just clarified the ambiguity as explained below. But if you plainly state what is implied we can dismiss.
Below you more strongly imply what seemed the implication before, but is still not stated outright with no room for misunderstanding. That is that Ms. McCarthy *only* used the texting function on her EPA phone for personal messages; and because she never used it for work this is why EPA has preserved none of her texts.
If that is what you were saying, would you please confirm that and that this is also EPA's position. In that case, you need not take any further questions to EPA and I accept the 'no records' response as sufficient such that we will dismiss.
I look forward to your reply.
Best,
Chris
Sent from my Verizon Wireless 4G LTE smartphone

"Lo, Michelle (USADC)" wrote:
Chris,

I will take your request back to the agency, but I would like to be clear in what I will be communicating to the agency. The Agency has already explained that Ms. McCarthy uses text messaging for family and other personal business, not government business and that, because personal text messages are unrelated to Agency business, they were not required to be preserved by the Agency. I am not sure how you read this statement to mean that Ms. McCarthy uses the texting function for EPA business. As I explained to Hans, this FOIA request deals with text messages on 18 specific dates, and we have already provided a very clear explanation for the "no records" response.

If what you are asking is – did Ms. McCarthy send ever any text messages that were work-related – I can ask the EPA if it would be willing to respond to this question even though it is well outside the scope of the FOIA request and does not alter the fact that the EPA did not locate any text messages on the 18 specific dates. If the EPA is willing to respond to the question of whether Ms. McCarthy ever sent any text messages that were work-related, can you represent that you will dismiss this case? As much as I

think briefing would be an unnecessary use of the Court's and the parties' resources, it may be that we end up having to brief this matter rather than engage in endless rounds of clarification.

Best,
Michelle

From: Chris Horner [mailto:chornerlaw@aol.com]
Sent: Thursday, August 01, 2013 6:41 PM
To: HBader@cei.org; Lo, Michelle (USADC)
Cc: SKazman@cei.org
Subject: Re: CEI v. EPA, 13-0779 (BAH)

Dera Michelle,

Please consider the following, in addition to what Hans has written you.

EPA's obligation is to *demonstrate* 'no records'. So far they have stated it. Demonstration is found in the bills for her device.

We have obtained what EPA claims to be the relevant (texting) portions of those bills, showing extensive texting activity, so extensive that it is thoroughly implausible that Ms. McCarthy didn't text on those dates.

After we calculated the probability (1 in 7.9 sextillion), we received your statement on EPA's behalf including the portion that is the basis for the ambiguity that Hans refers to and under which we cannot dismiss, but possibly can if you clarify what it is saying:

> Ms. McCarthy uses text messaging to communicate with her family. Ms. McCarthy uses email for government business, and text messaging for family and other personal business. These personal text messages are unrelated to Agency business, and thus were not required to be preserved by the Agency.

To me this plainly implied that EPA's position is that Ms. McCarthy uses email for work and the text messaging function*only* for personal messages, and therefore EPA has not preserved her text messaging. If that is the case, and EPA state it, then the 'no records' response is sufficient and we can, I believe, dismiss.

However, another of us suggested that in context it implies something materially different, that while Ms. McCarthy uses the texting function for EPA business, on the 18 dates at issue in this matter all texts sent or received by Ms. McCarthy were personal, which is why those specific text messages are not preserved. We have not had our stats people run the probability of that but I suggest it is for all practical purposes the same as the idea that she did not text on those 18 dates.

Regardless, it may imply both but we cannot reasonably discern which, and so we ask you to state which is EPA's assertion. This is material because of EPA's obligation to demonstrate, and the sole (and most reasonable) demonstration -- her phone bills -- indicating that one of these readings is implausible, and under that reading therefore so is the 'no records' claim. The other reading is more plausible and makes the 'no records' response plausible.

So, we simply would like clarification of the ambiguous statement: over the period in question, did EPA preserve some of Ms. McCarthy's text messages -- those that someone determined were work-related -- or did they preserve none of them because they were all personal?

If we have a clear answer to this then depending on that clarification we can possibly dismiss, or we know we cannot justify doing so. We also cannot justify doing so in the absence of a clarification of an ambiguous assertion. Clarifying it is of course much simpler than further litigating this if that clarification would enable resolution and dismissal.

But as such, we need it to be a formal representation, in writing.

We look forward to your response.

Best,
Chris Horner

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-----Original Message-----
From: Hans Bader <HBader@cei.org>
To: Lo, Michelle (USADC) (USADC) <Michelle.Lo2@usdoj.gov>
Cc: Sam Kazman <SKazman@cei.org>; Chris Horner <chornerlaw@aol.com>
Sent: Thu, Aug 1, 2013 11:30 am
Subject: RE: CEI v. EPA, 13-0779 (BAH)

I should note that we have no objection to the proposed briefing schedule you suggested

(EPA's Motion for Summary Judgment September 16, 2013
CEI's Opposition to EPA's Motion for Summary Judgment October 16, 2013
EPA's Reply November 6, 2013).

But, hopefully, we can tie up the loose ends described below in my earlier email, and moot the need for any summary judgment motion (by resolving the case before then).

I will call you in a few minutes to try to get these things squared away.

Thanks,

Hans Bader
CEI

From: Hans Bader
Sent: Wednesday, July 31, 2013 8:25 PM
To: 'Lo, Michelle (USADC)'
Cc: Sam Kazman; Chris Horner
Subject: RE: CEI v. EPA, 13-0779 (BAH)

You are correct that I am only seeking the text messages for 18 specific dates, not the text messages in general. The reason I am asking about the text messages not being preserved in general over that period (July 9, 2009 to June 29, 2012) is just to confirm the apparent reason why the text messages don't exist for those 18 dates. Once this is understood, the query makes sense, to clarify matters and eliminate any ambiguities.

Thanks,

Hans

From: Lo, Michelle (USADC) [mailto:Michelle.Lo2@usdoj.gov]
Sent: Wednesday, July 31, 2013 6:19 PM
To: Hans Bader

Cc: Sam Kazman; Chris Horner
Subject: RE: CEI v. EPA, 13-0779 (BAH)

Dear Hans,

As I stated below and as reflected in the EPA's answer to the complaint, the Agency did not locate any text messages for the 18 dates specified by your FOIA request. As for your question about the preservation of Ms. McCarthy's text messages in general, we are now going well beyond the scope of this FOIA litigation, and I do not believe this is the appropriate forum to address this question.

Thanks,
Michelle

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Cc: Sam Kazman; Chris Horner
Subject: RE: CEI v. EPA, 13-0779 (BAH)

Thanks for the clarifying details. Does this mean that her text messages in general weren't preserved, or just that the agency didn't locate any such messages for the 18 dates specified by the FOIA request? (Just tying up loose ends.)

Thanks,

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Cc: Sam Kazman; Chris Horner
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Dear Hans,

Thank you for the call just now. To summarize our discussion, I've inquired with the EPA about your question below, and EPA has explained that the Agency did not locate any text messages responsive to your FOIA request at issue in this case. Moreover and in any event, Ms. McCarthy uses text messaging to communicate with her family. Ms. McCarthy uses email for government business, and text messaging for family and other personal business. These personal text messages are unrelated to Agency business, and thus were not required to be preserved by the Agency.

It's my understanding that you will be filing a stipulation of dismissal in this case. I do have one edit, which is to add "with each party to bear its own costs and fees" to the end of the stipulation. I have also made a formatting change to the signature block since my telephone number is changing. If these changes are acceptable to you, you are authorized to file the stipulation on behalf of the parties.

Thanks,
Michelle

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Assistant United States Attorney
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Washington, D.C. 20530
(202) 252-2541 – ***Please note new number***

(202) 514-8780 fax
Michelle.Lo2@usdoj.gov

From: Hans Bader [mailto:HBader@cei.org]
Sent: Monday, July 29, 2013 3:02 PM
To: Lo, Michelle (USADC)
Cc: Sam Kazman; Chris Horner
Subject: RE: CEI v. EPA, 13-0779 (BAH)

One final thing: My colleagues are curious and want an answer to the following question before we dismiss the case: How can there be no responsive records (as stated by EPA in its no-records response, and echoed in the answer), that is, no text messages, when EPA has elsewhere produced documents to us saying that Ms. McCarthy sent hundreds of text messages using her EPA device (see the attached administrative response by EPA to Chris Horner's FOIA request – the first attached file is EPA's cover letter in response to that request, and the second is its substantive response)? I'd like to get that clarification on that issue before filing the stipulation I sent earlier.

Thanks,

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CEI

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To: 'Lo, Michelle (USADC)'
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Subject: RE: CEI v. EPA, 13-0779 (BAH)

Chris Horner remains very skeptical of the no-records response. Nevertheless, it seems to me that it may not be worth the candle to keep litigating this particular case, as a prudential matter.

Accordingly, plaintiff would be willing to file the attached stipulation of dismissal. If this is acceptable to you, then it can be filed with the court, and it will not be necessary to set a briefing schedule.

Sorry for the delay in responding.

Thank you.

Hans Bader
Competitive Enterprise Institute
(202) 331-2278
hbader@cei.org

From: Lo, Michelle (USADC) [mailto:Michelle.Lo2@usdoj.gov]
Sent: Monday, July 29, 2013 10:11 AM

To: Hans Bader
Subject: RE: CEI v. EPA, 13-0779 (BAH)

Dear Hans:

Per Judge Howell's Standing Order, the parties are to jointly prepare and submit a report indicating whether the agency has made a final determination on compliance with the FOIA request at issue and propose a schedule for the filing of dispositive motions within 14 days after any defendant appears, or by this Friday, August 2. As you know, the EPA issued a "no records" response to CEI's FOIA request on May 31, 2013. Provided CEI intends to proceed with this litigation, we propose the following briefing schedule:

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CEI's Opposition to EPA's Motion for Summary Judgment	October 16, 2013
EPA's Reply	November 6, 2013

Please let me know if the above proposal is agreeable to you. Thank you.

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(202) 252-2541 – ***Please note new number***
(202) 514-8780 fax
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Sent: Wednesday, July 17, 2013 6:06 PM
To: Lo, Michelle (USADC)
Subject: RE: CEI v. EPA, 13-0779 (BAH)

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Sent: Wednesday, July 17, 2013 6:00 PM
To: Hans Bader
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Hans:

Have you had a chance to discuss with your colleagues whether CEI intends to move forward with this litigation in light of the EPA's no records response?

Thanks,
Michelle

From: Lo, Michelle (USADC)
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Subject: CEI v. EPA, 13-0779 (BAH)

Hans:

Attached is the EPA's response to CEI's FOIA request for "copies of all text messages sent by Assistant Administrator for Air and Radiation Gina McCarthy on a mobile telephone provided for her use by the Agency" that I was referring to on our call just now. Please let me know if CEI believes that further litigation of this case will be necessary in light of the EPA's no records response. Thank you.

<< File: Final Response 6005.pdf >>

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Assistant United States Attorney
Civil Division
555 4th Street, N.W.
Washington, D.C. 20530
(202) 514-5134; (202) 514-8780 fax
Michelle.Lo2@usdoj.gov

From: Kelly, Lynn
To: Lo, Michelle (USADC)
Subject: RE: CEI v. EPA, 13-0779 (BAH)
Date: Tuesday, July 30, 2013 5:30:00 PM

(b) (5) DPP, (b) (5) ACP, (b) (5) AWP [redacted]

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

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From: Lo, Michelle (USADC) [mailto:Michelle.Lo2@usdoj.gov]
Sent: Tuesday, July 30, 2013 5:27 PM
To: Kelly, Lynn
Subject: RE: CEI v. EPA, 13-0779 (BAH)

Thanks. (b) (5) DPP, (b) (5) ACP, (b) (5) AWP [redacted]

From: Kelly, Lynn [mailto:Kelly.Lynn@epa.gov]
Sent: Tuesday, July 30, 2013 4:56 PM
To: Lo, Michelle (USADC)
Subject: RE: CEI v. EPA, 13-0779 (BAH)

(b) (5) DPP, (b) (5) ACP, (b) (5) AWP [redacted]

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

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From: Kelly, Lynn
Sent: Tuesday, July 30, 2013 4:17 PM
To: 'Lo, Michelle (USADC)'
Subject: RE: CEI v. EPA, 13-0779 (BAH)

(b) (5) DPP, (b) (5) ACP, (b) (5) AWP [redacted]

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

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From: Lo, Michelle (USADC) [mailto:Michelle.Lo2@usdoj.gov]
Sent: Tuesday, July 30, 2013 4:13 PM
To: Kelly, Lynn
Subject: RE: CEI v. EPA, 13-0779 (BAH)

(b) (5) DPP, (b) (5) ACP, (b) (5) AWP

[redacted]

[redacted].

From: Kelly, Lynn [mailto:Kelly.Lynn@epa.gov]
Sent: Tuesday, July 30, 2013 4:02 PM
To: Lo, Michelle (USADC)
Subject: RE: CEI v. EPA, 13-0779 (BAH)

(b) (5) DPP, (b) (5) ACP, (b) (5) AWP [redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

(b) (5) DPP, (b) (5) ACP, (b) (5) AWP

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

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Subject: RE: CEI v. EPA, 13-0779 (BAH)

Michelle,

(b) (5) DPP, (b) (5) ACP, (b) (5) AWP

Thanks!

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

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From: Kelly, Lynn
Sent: Tuesday, July 30, 2013 12:36 PM
To: 'Lo, Michelle (USADC)'
Subject: RE: CEI v. EPA, 13-0779 (BAH)

Michelle,

(b) (5) DPP, (b) (5) ACP, (b) (5) AWP

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From: Kelly, Lynn
Sent: Monday, July 29, 2013 5:10 PM
To: 'Lo, Michelle (USADC)'
Subject: RE: CEI v. EPA, 13-0779 (BAH)

(b) (5) DPP, (b) (5) ACP, (b) (5) AWP [redacted] Will be in touch tomorrow. Thanks!

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

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From: Lo, Michelle (USADC) [mailto:Michelle.Lo2@usdoj.gov]
Sent: Monday, July 29, 2013 4:50 PM
To: Kelly, Lynn
Subject: RE: CEI v. EPA, 13-0779 (BAH)

(b) (5) DPP, (b) (5) ACP, (b) (5) AWP [redacted]. Thanks.

From: Kelly, Lynn [mailto:Kelly.Lynn@epa.gov]
Sent: Monday, July 29, 2013 4:31 PM
To: Lo, Michelle (USADC)
Subject: RE: CEI v. EPA, 13-0779 (BAH)

Michelle,

(b) (5) DPP, (b) (5) ACP, (b) (5) AWP [redacted]

(b) (5) DPP, (b) (5) ACP, (b) (5) AWP [redacted]

[redacted]

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From: Lo, Michelle (USADC) [mailto:Michelle.Lo2@usdoj.gov]
Sent: Monday, July 29, 2013 3:12 PM
To: Kelly, Lynn
Subject: FW: CEI v. EPA, 13-0779 (BAH)

Lynn: (b)(5) AWP, (b)(5) ACP [redacted] Thanks.

From: Hans Bader [mailto:HBader@cei.org]
Sent: Monday, July 29, 2013 3:02 PM
To: Lo, Michelle (USADC)
Cc: Sam Kazman; Chris Horner
Subject: RE: CEI v. EPA, 13-0779 (BAH)

One final thing: My colleagues are curious and want an answer to the following question before we dismiss the case: How can there be no responsive records (as stated by EPA in its no-records response, and echoed in the answer), that is, no text messages, when EPA has elsewhere produced documents to us saying that Ms. McCarthy sent hundreds of text messages using her EPA device (see the attached administrative response by EPA to Chris Horner's FOIA request – the first attached file is EPA's cover letter in response to that request, and the second is its substantive response)? I'd like to get that clarification on that issue before filing the stipulation I sent earlier.

Thanks,

Hans Bader
CEI

From: Hans Bader
Sent: Monday, July 29, 2013 12:17 PM
To: 'Lo, Michelle (USADC)'
Cc: Sam Kazman
Subject: RE: CEI v. EPA, 13-0779 (BAH)

Oops. The draft stipulation I sent in the below email had the wrong docket number on it. That has been fixed in the attached draft stipulation.

From: Hans Bader
Sent: Monday, July 29, 2013 12:11 PM
To: 'Lo, Michelle (USADC)'
Cc: Sam Kazman
Subject: RE: CEI v. EPA, 13-0779 (BAH)

Chris Horner remains very skeptical of the no-records response. Nevertheless, it seems to me that it may not be worth the candle to keep litigating this particular case, as a prudential matter.

Accordingly, plaintiff would be willing to file the attached stipulation of dismissal. If this is acceptable to you, then it can be filed with the court, and it will not be necessary to set a briefing schedule.

Sorry for the delay in responding.

Thank you.

Hans Bader
Competitive Enterprise Institute
(202) 331-2278
hbader@cei.org

From: Lo, Michelle (USADC) [mailto:Michelle.Lo2@usdoj.gov]
Sent: Monday, July 29, 2013 10:11 AM
To: Hans Bader
Subject: RE: CEI v. EPA, 13-0779 (BAH)

Dear Hans:

Per Judge Howell's Standing Order, the parties are to jointly prepare and submit a report indicating whether the agency has made a final determination on compliance with the FOIA request at issue and propose a schedule for the filing of dispositive motions within 14 days after any defendant appears, or by this Friday, August 2. As you know, the EPA issued a "no records" response to CEI's FOIA request on May 31, 2013. Provided CEI intends to proceed with this litigation, we propose the following briefing schedule:

EPA's Motion for Summary Judgment	September 16, 2013
CEI's Opposition to EPA's Motion for Summary Judgment	October 16, 2013
EPA's Reply	November 6, 2013

Please let me know if the above proposal is agreeable to you. Thank you.

Michelle Lo
Assistant United States Attorney
Civil Division
555 4th Street, N.W.
Washington, D.C. 20530
(202) 252-2541 – ***Please note new number***
(202) 514-8780 fax

Michelle.Lo2@usdoj.gov

From: Hans Bader [mailto:HBader@cei.org]
Sent: Wednesday, July 17, 2013 6:06 PM
To: Lo, Michelle (USADC)
Subject: RE: CEI v. EPA, 13-0779 (BAH)

I am still waiting to hear back. Sorry about the delay.

From: Lo, Michelle (USADC) [mailto:Michelle.Lo2@usdoj.gov]
Sent: Wednesday, July 17, 2013 6:00 PM
To: Hans Bader
Subject: RE: CEI v. EPA, 13-0779 (BAH)

Hans:

Have you had a chance to discuss with your colleagues whether CEI intends to move forward with this litigation in light of the EPA's no records response?

Thanks,
Michelle

From: Lo, Michelle (USADC)
Sent: Thursday, July 11, 2013 4:12 PM
To: Hans Bader <HBader@cei.org> (HBader@cei.org)
Subject: CEI v. EPA, 13-0779 (BAH)

Hans:

Attached is the EPA's response to CEI's FOIA request for "copies of all text messages sent by Assistant Administrator for Air and Radiation Gina McCarthy on a mobile telephone provided for her use by the Agency" that I was referring to on our call just now. Please let me know if CEI believes that further litigation of this case will be necessary in light of the EPA's no records response. Thank you.

<< File: Final Response 6005.pdf >>

Michelle Lo
Assistant United States Attorney
Civil Division
555 4th Street, N.W.
Washington, D.C. 20530
(202) 514-5134; (202) 514-8780 fax
Michelle.Lo2@usdoj.gov

From: Kelly, Lynn
To: Lo, Michelle (USADC)
Subject: RE: CEI v. EPA, 13-0779 (BAH)
Date: Tuesday, September 10, 2013 1:42:00 PM

(b) (5) DPP, (b) (5) ACP, (b) (5) AWP [redacted]

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: Lo, Michelle (USADC) [mailto:Michelle.Lo2@usdoj.gov]
Sent: Tuesday, September 10, 2013 1:40 PM
To: Kelly, Lynn
Subject: FW: CEI v. EPA, 13-0779 (BAH)

Please see below. (b) (5) DPP, (b) (5) ACP, (b) (5) AWP [redacted]. Thanks.

From: Lo, Michelle (USADC)
Sent: Tuesday, September 10, 2013 12:22 PM
To: 'Hans Bader'; Chris Horner
Cc: Sam Kazman
Subject: RE: CEI v. EPA, 13-0779 (BAH)

Thank you. We had exchanged a draft stipulation of dismissal at the time our discussions began, so I'm attaching it here with a revision to my new phone number. I'll look out for the filing of the stipulation in a day or two.

Michelle Lo
Assistant United States Attorney
Civil Division
555 4th Street, N.W.
Washington, D.C. 20530
(202) 252-2541 – ***Please note new number***
(202) 514-8780 fax
Michelle.Lo2@usdoj.gov

From: Hans Bader [mailto:HBader@cei.org]
Sent: Tuesday, September 10, 2013 12:17 PM
To: Lo, Michelle (USADC); Chris Horner
Cc: Sam Kazman
Subject: RE: CEI v. EPA, 13-0779 (BAH)

OK. We will dismiss (I am busy writing a brief in another case, but will be done with that in a day or two, and can execute a dismissal notice then).

From: Lo, Michelle (USADC) [mailto:Michelle.Lo2@usdoj.gov]
Sent: Tuesday, September 10, 2013 12:14 PM

To: Chris Horner
Cc: Hans Bader; Sam Kazman
Subject: RE: CEI v. EPA, 13-0779 (BAH)

If you could please let me know by this afternoon whether you will be dismissing this case, I would appreciate it. Under the current schedule, our opening brief is due on Monday, September 16, so we will need to plan accordingly since Judge Howell requires any extension motions to be filed at least four days prior to the deadline.

From: Chris Horner [mailto:chornerlaw@aol.com]
Sent: Monday, September 09, 2013 4:43 PM
To: Lo, Michelle (USADC)
Cc: HBader@cei.org; SKazman@cei.org
Subject: Re: CEI v. EPA, 13-0779 (BAH)

Ok. Thank you.

Sent from my iPhone

On Sep 9, 2013, at 4:37 PM, "Lo, Michelle (USADC)" <Michelle.Lo2@usdoj.gov> wrote:

> I had hoped to avoid this very problem, which is why I thought it would be productive for us to discuss over the phone. I don't think there is any ambiguity in my emails, but, yes, I can confirm again that I am saying the approximately three-year period from July 9, 2009 to June 29, 2012.
>
> Thanks,
> Michelle
>
> **From:** Chris Horner [mailto:chornerlaw@aol.com]
> **Sent:** Monday, September 09, 2013 4:21 PM
> **To:** Lo, Michelle (USADC); HBader@cei.org
> **Cc:** SKazman@cei.org
> **Subject:** Re: CEI v. EPA, 13-0779 (BAH)
>
> I'm sorry but I keep reading two meanings in most of these messages. Please confirm you are saying the approximately three-year period from July 9, 2009 to June 29, 2012?
>
> Best,
> Chris Horner
>
> *********
> 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: Lo, Michelle (USADC) (USADC) <Michelle.Lo2@usdoj.gov>
> To: Hans Bader <HBader@cei.org>; Chris Horner <chornerlaw@aol.com>
> Cc: Sam Kazman <SKazman@cei.org>
> Sent: Mon, Sep 9, 2013 4:17 pm
> Subject: RE: CEI v. EPA, 13-0779 (BAH)

Yes, I mean all the dates between the period from July 9, 2009, to June 29, 2012.

From: Hans Bader [mailto:HBader@cei.org]
Sent: Monday, September 09, 2013 3:51 PM
To: Lo, Michelle (USADC); Chris Horner
Cc: Sam Kazman
Subject: RE: CEI v. EPA, 13-0779 (BAH)

Thanks. By "encompassing," you mean not just the 18 dates, but also the interstitial dates between them, right? (When we spoke over the phone, I did not think in detail over what was meant by the words "entire period" when you said at that time, "none of her texts over the entire period . . .", although this is still helpful). Thanks.

From: Lo, Michelle (USADC) [mailto:Michelle.Lo2@usdoj.gov]
Sent: Monday, September 9, 2013 3:46 PM
To: Chris Horner; Hans Bader
Cc: Sam Kazman
Subject: RE: CEI v. EPA, 13-0779 (BAH)

Chris,

I was not able to reach you just now, but I did speak with Hans and had a beneficial discussion with him. Although the requested clarification in your August 1 email goes beyond the scope of CEI's FOIA request, which seeks only text messages sent by Ms. McCarthy on the 18 specific dates, the EPA is willing to respond in the interest of reaching an amicable resolution. The agency's position is as follows:

To the very best of her recollection, Ms. McCarthy used the texting function on her EPA phone for personal purposes only and not to conduct Agency business. None of her texts over the period encompassing the 18 specific dates at issue in CEI's FOIA request (July 9, 2009, to June 29, 2012) were preserved.

We believe this should clarify any remaining ambiguity and obviate the need for further litigation. I am of course available to discuss further if you think that would be helpful. I would appreciate it if you can let me know by tomorrow if this resolves all outstanding issues.

Thanks,
Michelle

From: Lo, Michelle (USADC)
Sent: Monday, September 09, 2013 11:28 AM
To: 'Chris Horner'; HBader@cei.org
Cc: SKazman@cei.org
Subject: RE: CEI v. EPA, 13-0779 (BAH)

Yes, I think there is progress on this issue, and it would be helpful for us to have a brief discussion. Please let me know when you are available. Thanks.

From: Chris Horner [mailto:chornerlaw@aol.com]
Sent: Monday, September 09, 2013 11:24 AM
To: Lo, Michelle (USADC); HBader@cei.org
Cc: SKazman@cei.org
Subject: Re: CEI v. EPA, 13-0779 (BAH)

The below is where I think things were when we left off. FYI

From my 8/01 email:

> we have only sought one clear statement, I *think* you may just clarified the ambiguity as explained below. But if you plainly state what is implied we can dismiss.
> Below you more strongly imply what seemed the implication before, but is still not stated outright with no room for misunderstanding. That is that Ms. McCarthy *only* used the texting function on her EPA phone for personal messages; and because she never used it for work this is why EPA has preserved none of her texts.
> If that is what you were saying, would you please confirm that and that this is also EPA's position. In that case, you need not take any further questions to EPA and I accept the 'no records' response as sufficient such that we will dismiss.

Is there any progress on this?

Best,
Chris Horner

-----Original Message-----
From: Lo, Michelle (USADC) (USADC) <Michelle.Lo2@usdoj.gov>
To: Hans Bader <HBader@cei.org>; Chris Horner <chornerlaw@aol.com>
Cc: Sam Kazman <SKazman@cei.org>
Sent: Fri, Aug 16, 2013 1:51 pm
Subject: RE: CEI v. EPA, 13-0779 (BAH)

My apologies for the delay, I am still waiting to hear from EPA. I think there are availability issues due to this being August, but I will get back to you as soon as I can.

From: Hans Bader [mailto:HBader@cei.org]
Sent: Friday, August 16, 2013 1:48 PM
To: Lo, Michelle (USADC); Chris Horner
Cc: Sam Kazman
Subject: RE: CEI v. EPA, 13-0779 (BAH)

Thanks. Hopefully, you will hear soon from EPA (your email below suggested you would hear from EPA by the week of August 5, which has now come and gone).

From: Lo, Michelle (USADC) [mailto:Michelle.Lo2@usdoj.gov]
Sent: Friday, August 02, 2013 4:09 PM
To: Chris Horner; Hans Bader
Cc: Sam Kazman
Subject: RE: CEI v. EPA, 13-0779 (BAH)

Thanks, Chris. It is looking like I will not be able to get a response from the Agency today (due to availability issues), so I think it makes most sense for us to go ahead and file a status report with the proposed briefing schedule so we are in compliance with the Court's standing order. I should hear from EPA by early next week, so we can continue our discussions at that time. If the attached draft report is acceptable, let me know and I can take care of the filing.

From: chornerlaw@aol.com [mailto:chornerlaw@aol.com]
Sent: Friday, August 02, 2013 2:54 PM

To: Lo, Michelle (USADC); hbader@cei.org
Cc: skazman@cei.org
Subject: RE: CEI v. EPA, 13-0779 (BAH)

Yes I will, am in a mtg 3-5-something but will be able to email I think, cch
Sent from my Verizon Wireless 4G LTE smartphone

"Lo, Michelle (USADC)" wrote:
Dear Chris,

I am waiting to hear back from the EPA regarding your follow-up inquiry below. I am hopeful that I will have a response to you today, but it may not be until around 5 pm due to various individuals' availability. Will you be available then so we can figure out whether we will be filing a dismissal or a proposed briefing schedule at that time?

Thanks,
Michelle

From: chornerlaw@aol.com [mailto:chornerlaw@aol.com]
Sent: Thursday, August 01, 2013 10:05 PM
To: Lo, Michelle (USADC); hbader@cei.org
Cc: skazman@cei.org
Subject: RE: CEI v. EPA, 13-0779 (BAH)

Dear Michelle,
Rather than endless rounds of clarification, though we have only sought one clear statement, I *think* you may just clarified the ambiguity as explained below. But if you plainly state what is implied we can dismiss.
Below you more strongly imply what seemed the implication before, but is still not stated outright with no room for misunderstanding. That is that Ms. McCarthy *only* used the texting function on her EPA phone for personal messages; and because she never used it for work this is why EPA has preserved none of her texts.
If that is what you were saying, would you please confirm that and that this is also EPA's position. In that case, you need not take any further questions to EPA and I accept the 'no records' response as sufficient such that we will dismiss.
I look forward to your reply.
Best,
Chris
Sent from my Verizon Wireless 4G LTE smartphone

"Lo, Michelle (USADC)" wrote:
Chris,

I will take your request back to the agency, but I would like to be clear in what I will be communicating to the agency. The Agency has already explained that Ms. McCarthy uses text messaging for family and other personal business, not government business and that, because personal text messages are unrelated to Agency business, they were not required to be preserved by the Agency. I am not sure how you read this statement to mean that Ms. McCarthy uses the texting function for EPA business. As I explained to Hans, this FOIA request deals with text messages on 18 specific dates, and we have already provided a very clear explanation for the "no records" response.

If what you are asking is – did Ms. McCarthy send ever any text messages that were work-

related – I can ask the EPA if it would be willing to respond to this question even though it is well outside the scope of the FOIA request and does not alter the fact that the EPA did not locate any text messages on the 18 specific dates. If the EPA is willing to respond to the question of whether Ms. McCarthy ever sent any text messages that were work-related, can you represent that you will dismiss this case? As much as I think briefing would be an unnecessary use of the Court's and the parties' resources, it may be that we end up having to brief this matter rather than engage in endless rounds of clarification.

Best,
Michelle

From: Chris Horner [mailto:chornerlaw@aol.com]
Sent: Thursday, August 01, 2013 6:41 PM
To: HBader@cei.org; Lo, Michelle (USADC)
Cc: SKazman@cei.org
Subject: Re: CEI v. EPA, 13-0779 (BAH)

Dera Michelle,

Please consider the following, in addition to what Hans has written you.

EPA's obligation is to *demonstrate* 'no records'. So far they have stated it. Demonstration is found in the bills for her device.

We have obtained what EPA claims to be the relevant (texting) portions of those bills, showing extensive texting activity, so extensive that it is thoroughly implausible that Ms. McCarthy didn't text on those dates.

After we calculated the probability (1 in 7.9 sextillion), we received your statement on EPA's behalf including the portion that is the basis for the ambiguity that Hans refers to and under which we cannot dismiss, but possibly can if you clarify what it is saying:

> Ms. McCarthy uses text messaging to communicate with her family. Ms. McCarthy uses email for government business, and text messaging for family and other personal business. These personal text messages are unrelated to Agency business, and thus were not required to be preserved by the Agency.

From: Kelly, Lynn
To: Lo, Michelle (USADC)
Subject: RE: CEI v. EPA, 13-0779 (BAH)
Date: Tuesday, July 30, 2013 2:18:00 PM

Michelle,

(b) (5) DPP, (b) (5) ACP, (b) (5) AWP [redacted] Thanks!

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

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[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

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

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Sorry for the delay in responding.

Thank you.

Hans Bader
Competitive Enterprise Institute
(202) 331-2278
hbader@cei.org

From: Lo, Michelle (USADC) [mailto:Michelle.Lo2@usdoj.gov]
Sent: Monday, July 29, 2013 10:11 AM
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Subject: RE: CEI v. EPA, 13-0779 (BAH)

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CEI's Opposition to EPA's Motion for Summary Judgment	October 16, 2013
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Please let me know if the above proposal is agreeable to you. Thank you.

Michelle Lo
Assistant United States Attorney
Civil Division
555 4th Street, N.W.
Washington, D.C. 20530
(202) 252-2541 – ***Please note new number***
(202) 514-8780 fax
Michelle.Lo2@usdoj.gov

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Sent: Wednesday, July 17, 2013 6:06 PM
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Subject: RE: CEI v. EPA, 13-0779 (BAH)

Hans:

Have you had a chance to discuss with your colleagues whether CEI intends to move forward with this litigation in light of the EPA's no records response?

Thanks,
Michelle

From: Lo, Michelle (USADC)
Sent: Thursday, July 11, 2013 4:12 PM
To: Hans Bader <HBader@cei.org> (HBader@cei.org)
Subject: CEI v. EPA, 13-0779 (BAH)

Hans:

Attached is the EPA's response to CEI's FOIA request for "copies of all text messages sent by Assistant Administrator for Air and Radiation Gina McCarthy on a mobile telephone provided for her use by the Agency" that I was referring to on our call just now. Please let me know if CEI believes that further litigation of this case will be necessary in light of the EPA's no records response. Thank you.

<< File: Final Response 6005.pdf >>

Michelle Lo
Assistant United States Attorney
Civil Division
555 4th Street, N.W.
Washington, D.C. 20530
(202) 514-5134; (202) 514-8780 fax
Michelle.Lo2@usdoj.gov

From: Drinkard, Andrea
To: Ketcham-Colwill, Nancy; Kelly, Lynn; Miller, Kevin
Subject: RE: CEI v. EPA, 13-0779 (BAH)
Date: Tuesday, July 30, 2013 2:15:19 PM

(b)(5) AWP, (b)(5) ACP

Andrea Drinkard
U.S. Environmental Protection Agency
Office of Air and Radiation
Email: drinkard.andrea@epa.gov
Phone: 202.564.1601
Cell: 202.236.7765

From: Ketcham-Colwill, Nancy
Sent: Tuesday, July 30, 2013 1:16 PM
To: Kelly, Lynn; Miller, Kevin
Cc: Drinkard, Andrea
Subject: RE: CEI v. EPA, 13-0779 (BAH)

(b)(5) AWP, (b)(5) ACP

From: Kelly, Lynn
Sent: Tuesday, July 30, 2013 12:33 PM
To: Ketcham-Colwill, Nancy; Miller, Kevin
Subject: RE: CEI v. EPA, 13-0779 (BAH)

Nancy,

(b) (5) DPP, (b) (5) ACP, (b) (5) AWP

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.

From: Ketcham-Colwill, Nancy
Sent: Tuesday, July 30, 2013 10:09 AM
To: Kelly, Lynn; Miller, Kevin
Subject: RE: CEI v. EPA, 13-0779 (BAH)

(b) (5) DPP, (b) (5) ACP, (b) (5) AWP

Nancy

From: Kelly, Lynn
Sent: Tuesday, July 30, 2013 8:54 AM
To: Miller, Kevin; Ketcham-Colwill, Nancy
Subject: RE: CEI v. EPA, 13-0779 (BAH)

(b) (5) DPP, (b) (5) ACP, (b) (5) AWP

(b) (5) DPP, (b) (5) ACP, (b) (5) AWP

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

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From: Miller, Kevin
Sent: Tuesday, July 30, 2013 8:39 AM
To: Kelly, Lynn; Ketcham-Colwill, Nancy
Subject: RE: CEI v. EPA, 13-0779 (BAH)

Lynn & Nancy,

(b) (5) DPP, (b) (5) ACP, (b) (5) AWP

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

From: Kelly, Lynn
Sent: Monday, July 29, 2013 5:55 PM
To: Ketcham-Colwill, Nancy; Miller, Kevin
Subject: FW: CEI v. EPA, 13-0779 (BAH)

Nancy,

(b) (5) DPP, (b) (5) ACP, (b) (5) AWP

(b) (5) DPP, (b) (5) ACP, (b) (5) AWP [redacted]

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

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From: Lo, Michelle (USADC) [mailto:Michelle.Lo2@usdoj.gov]
Sent: Monday, July 29, 2013 3:12 PM
To: Kelly, Lynn
Subject: FW: CEI v. EPA, 13-0779 (BAH)

Lynn: (b)(5) AWP, (b)(5) ACP [redacted] Thanks.

From: Hans Bader [mailto:HBader@cei.org]
Sent: Monday, July 29, 2013 3:02 PM
To: Lo, Michelle (USADC)
Cc: Sam Kazman; Chris Horner
Subject: RE: CEI v. EPA, 13-0779 (BAH)

One final thing: My colleagues are curious and want an answer to the following question before we dismiss the case: How can there be no responsive records (as stated by EPA in its no-records response, and echoed in the answer), that is, no text messages, when EPA has elsewhere produced documents to us saying that Ms. McCarthy sent hundreds of text messages using her EPA device (see the attached administrative response by EPA to Chris Horner's FOIA request – the first attached file is EPA's cover letter in response to that request, and the second is its substantive response)? I'd like to get that clarification on that issue before filing the stipulation I sent earlier.

Thanks,

Hans Bader
CEI

From: Hans Bader
Sent: Monday, July 29, 2013 12:17 PM
To: 'Lo, Michelle (USADC)'
Cc: Sam Kazman
Subject: RE: CEI v. EPA, 13-0779 (BAH)

Oops. The draft stipulation I sent in the below email had the wrong docket number on it. That has been fixed in the attached draft stipulation.

From: Hans Bader
Sent: Monday, July 29, 2013 12:11 PM
To: 'Lo, Michelle (USADC)'

Cc: Sam Kazman
Subject: RE: CEI v. EPA, 13-0779 (BAH)

Chris Horner remains very skeptical of the no-records response. Nevertheless, it seems to me that it may not be worth the candle to keep litigating this particular case, as a prudential matter.

Accordingly, plaintiff would be willing to file the attached stipulation of dismissal. If this is acceptable to you, then it can be filed with the court, and it will not be necessary to set a briefing schedule.

Sorry for the delay in responding.

Thank you.

Hans Bader
Competitive Enterprise Institute
(202) 331-2278
hbader@cei.org

From: Lo, Michelle (USADC) [mailto:Michelle.Lo2@usdoj.gov]
Sent: Monday, July 29, 2013 10:11 AM
To: Hans Bader
Subject: RE: CEI v. EPA, 13-0779 (BAH)

Dear Hans:

Per Judge Howell's Standing Order, the parties are to jointly prepare and submit a report indicating whether the agency has made a final determination on compliance with the FOIA request at issue and propose a schedule for the filing of dispositive motions within 14 days after any defendant appears, or by this Friday, August 2. As you know, the EPA issued a "no records" response to CEI's FOIA request on May 31, 2013. Provided CEI intends to proceed with this litigation, we propose the following briefing schedule:

EPA's Motion for Summary Judgment	September 16, 2013
CEI's Opposition to EPA's Motion for Summary Judgment	October 16, 2013
EPA's Reply	November 6, 2013

Please let me know if the above proposal is agreeable to you. Thank you.

Michelle Lo
Assistant United States Attorney
Civil Division
555 4th Street, N.W.
Washington, D.C. 20530
(202) 252-2541 – ***Please note new number***
(202) 514-8780 fax
Michelle.Lo2@usdoj.gov

From: Hans Bader [mailto:HBader@cei.org]
Sent: Wednesday, July 17, 2013 6:06 PM
To: Lo, Michelle (USADC)
Subject: RE: CEI v. EPA, 13-0779 (BAH)

I am still waiting to hear back. Sorry about the delay.

From: Lo, Michelle (USADC) [mailto:Michelle.Lo2@usdoj.gov]
Sent: Wednesday, July 17, 2013 6:00 PM
To: Hans Bader
Subject: RE: CEI v. EPA, 13-0779 (BAH)

Hans:

Have you had a chance to discuss with your colleagues whether CEI intends to move forward with this litigation in light of the EPA's no records response?

Thanks,
Michelle

From: Lo, Michelle (USADC)
Sent: Thursday, July 11, 2013 4:12 PM
To: Hans Bader <HBader@cei.org> (HBader@cei.org)
Subject: CEI v. EPA, 13-0779 (BAH)

Hans:

Attached is the EPA's response to CEI's FOIA request for "copies of all text messages sent by Assistant Administrator for Air and Radiation Gina McCarthy on a mobile telephone provided for her use by the Agency" that I was referring to on our call just now. Please let me know if CEI believes that further litigation of this case will be necessary in light of the EPA's no records response. Thank you.

<< File: Final Response 6005.pdf >>

Michelle Lo
Assistant United States Attorney
Civil Division
555 4th Street, N.W.
Washington, D.C. 20530
(202) 514-5134; (202) 514-8780 fax
Michelle.Lo2@usdoj.gov

From: Kelly, Lynn
To: Lo, Michelle (USADC)
Subject: RE: CEI v. EPA, 13-0779 (BAH)
Date: Friday, September 06, 2013 11:46:00 AM

(b) (5) DPP, (b) (5) ACP, (b) (5) AWP [redacted]

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: Lo, Michelle (USADC) [mailto:Michelle.Lo2@usdoj.gov]
Sent: Friday, September 06, 2013 11:08 AM
To: Kelly, Lynn
Subject: RE: CEI v. EPA, 13-0779 (BAH)

(b) (5) DPP, (b) (5) ACP, (b) (5) AWP [redacted]

[redacted]

From: Lo, Michelle (USADC)
Sent: Friday, August 02, 2013 9:36 AM
To: Kelly, Lynn (Kelly.Lynn@epa.gov)
Subject: FW: CEI v. EPA, 13-0779 (BAH)

From: chornerlaw@aol.com [mailto:chornerlaw@aol.com]
Sent: Thursday, August 01, 2013 10:05 PM
To: Lo, Michelle (USADC); hbader@cei.org
Cc: skazman@cei.org
Subject: RE: CEI v. EPA, 13-0779 (BAH)

Dear Michelle,

Rather than endless rounds of clarification, though we have only sought one clear statement, I *think* you may just clarified the ambiguity as explained below. But if you plainly state what is implied we can dismiss.

Below you more strongly imply what seemed the implication before, but is still not stated outright with no room for misunderstanding. That is that Ms. McCarthy *only* used the texting function on her EPA phone for personal messages; and because she never used it for work this is why EPA has preserved none of her texts.

If that is what you were saying, would you please confirm that and that this is also EPA's position. In that case, you need not take any further questions to EPA and I accept the 'no records' response as sufficient such that we will dismiss.

I look forward to your reply.

Best,
Chris

Sent from my Verizon Wireless 4G LTE smartphone

"Lo, Michelle (USADC)" wrote:

Chris,

I will take your request back to the agency, but I would like to be clear in what I will be communicating to the agency. The Agency has already explained that Ms. McCarthy uses text messaging for family and other personal business, not government business and that, because personal text messages are unrelated to Agency business, they were not required to be preserved by the Agency. I am not sure how you read this statement to mean that Ms. McCarthy uses the texting function for EPA business. As I explained to Hans, this FOIA request deals with text messages on 18 specific dates, and we have already provided a very clear explanation for the "no records" response.

If what you are asking is – did Ms. McCarthy send ever any text messages that were work-related – I can ask the EPA if it would be willing to respond to this question even though it is well outside the scope of the FOIA request and does not alter the fact that the EPA did not locate any text messages on the 18 specific dates. If the EPA is willing to respond to the question of whether Ms. McCarthy ever sent any text messages that were work-related, can you represent that you will dismiss this case? As much as I think briefing would be an unnecessary use of the Court's and the parties' resources, it may be that we end up having to brief this matter rather than engage in endless rounds of clarification.

Best,
Michelle

From: Chris Horner [mailto:chornerlaw@aol.com]
Sent: Thursday, August 01, 2013 6:41 PM
To: HBader@cei.org; Lo, Michelle (USADC)
Cc: SKazman@cei.org
Subject: Re: CEI v. EPA, 13-0779 (BAH)

Dera Michelle,

Please consider the following, in addition to what Hans has written you.

EPA's obligation is to *demonstrate* 'no records'. So far they have stated it. Demonstration is found in the bills for her device.

We have obtained what EPA claims to be the relevant (texting) portions of those bills, showing extensive texting activity, so extensive that it is thoroughly implausible that Ms. McCarthy didn't text on those dates.

After we calculated the probability (1 in 7.9 sextillion), we received your statement on EPA's behalf including the portion that is the basis for the ambiguity that Hans refers to and under which we cannot dismiss, but possibly can if you clarify what it is saying:

> Ms. McCarthy uses text messaging to communicate with her family. Ms. McCarthy uses email for government business, and text messaging for family and other personal business. These personal text messages are unrelated to Agency business, and thus were not required to be preserved by the Agency.

To me this plainly implied that EPA's position is that Ms. McCarthy uses email for work and the text messaging function*only* for personal messages, and therefore EPA has not preserved her text messaging. If that is the case, and EPA state it, then the 'no records' response is sufficient and we can, I believe, dismiss.

However, another of us suggested that in context it implies something materially different, that while Ms. McCarthy uses the texting function for EPA business, on the 18 dates at issue in this matter all texts sent or received by Ms. McCarthy were personal, which is why those specific text messages are not preserved. We have not had our stats people run the probability of that but I suggest it is for all practical purposes the same as the idea that she did not text on those 18 dates.

Regardless, it may imply both but we cannot reasonably discern which, and so we ask you to state which is EPA's assertion. This is material because of EPA's obligation to demonstrate, and the sole (and most reasonable) demonstration -- her phone bills -- indicating that one of these readings is implausible, and under that reading therefore so is the 'no records' claim. The other reading is more plausible and makes the 'no records' response plausible.

So, we simply would like clarification of the ambiguous statement: over the period in question, did EPA preserve some of Ms. McCarthy's text messages -- those that someone determined were work-related -- or did they preserve none of them because they were all personal?

If we have a clear answer to this then depending on that clarification we can possibly dismiss, or we know we cannot justify doing so. We also cannot justify doing so in the absence of a clarification of an ambiguous assertion. Clarifying it is of course much simpler than further litigating this if that clarification would enable resolution and dismissal.

But as such, we need it to be a formal representation, in writing.

We look forward to your response.

Best,
Chris Horner

****
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: Hans Bader <HBader@cei.org>
To: Lo, Michelle (USADC) (USADC) <Michelle.Lo2@usdoj.gov>
Cc: Sam Kazman <SKazman@cei.org>; Chris Horner <chornerlaw@aol.com>
Sent: Thu, Aug 1, 2013 11:30 am

Subject: RE: CEI v. EPA, 13-0779 (BAH)

I should note that we have no objection to the proposed briefing schedule you suggested

(EPA's Motion for Summary Judgment September 16, 2013
CEI's Opposition to EPA's Motion for Summary Judgment October 16, 2013
EPA's Reply November 6, 2013).

But, hopefully, we can tie up the loose ends described below in my earlier email, and moot the need for any summary judgment motion (by resolving the case before then).

I will call you in a few minutes to try to get these things squared away.

Thanks,

Hans Bader
CEI

From: Hans Bader
Sent: Wednesday, July 31, 2013 8:25 PM
To: 'Lo, Michelle (USADC)'
Cc: Sam Kazman; Chris Horner
Subject: RE: CEI v. EPA, 13-0779 (BAH)

You are correct that I am only seeking the text messages for 18 specific dates, not the text messages in general. The reason I am asking about the text messages not being preserved in general over that period (July 9, 2009 to June 29, 2012) is just to confirm the apparent reason why the text messages don't exist for those 18 dates. Once this is understood, the query makes sense, to clarify matters and eliminate any ambiguities.

Thanks,

Hans

From: Lo, Michelle (USADC) [mailto:Michelle.Lo2@usdoj.gov]
Sent: Wednesday, July 31, 2013 6:19 PM
To: Hans Bader
Cc: Sam Kazman; Chris Horner
Subject: RE: CEI v. EPA, 13-0779 (BAH)

Dear Hans,

As I stated below and as reflected in the EPA's answer to the complaint, the Agency did not locate any text messages for the 18 dates specified by your FOIA request. As for your question about the preservation of Ms. McCarthy's text messages in general, we are now going well beyond the scope of this FOIA litigation, and I do not believe this is the appropriate forum to address this question.

Thanks,
Michelle

From: Hans Bader [mailto:HBader@cei.org]
Sent: Wednesday, July 31, 2013 4:08 PM
To: Lo, Michelle (USADC)
Cc: Sam Kazman; Chris Horner
Subject: RE: CEI v. EPA, 13-0779 (BAH)

Thanks for the clarifying details. Does this mean that her text messages in general weren't preserved, or just that the agency didn't locate any such messages for the 18 dates specified by the FOIA request? (Just tying up loose ends.)

Thanks,

Hans

From: Lo, Michelle (USADC) [mailto:Michelle.Lo2@usdoj.gov]
Sent: Wednesday, July 31, 2013 3:42 PM
To: Hans Bader
Cc: Sam Kazman; Chris Horner
Subject: RE: CEI v. EPA, 13-0779 (BAH)

Dear Hans,

Thank you for the call just now. To summarize our discussion, I've inquired with the EPA about your question below, and EPA has explained that the Agency did not locate any text messages responsive to your FOIA request at issue in this case. Moreover and in any event, Ms. McCarthy uses text messaging to communicate with her family. Ms. McCarthy uses email for government business, and text messaging for family and other personal business. These personal text messages are unrelated to Agency business, and thus were not required to be preserved by the Agency.

It's my understanding that you will be filing a stipulation of dismissal in this case. I do have one edit, which is to add "with each party to bear its own costs and fees" to the end of the stipulation. I have also made a formatting change to the signature block since my telephone number is changing. If these changes are acceptable to you, you are authorized to file the stipulation on behalf of the parties.

Thanks,
Michelle

Michelle Lo
Assistant United States Attorney
Civil Division
555 4th Street, N.W.
Washington, D.C. 20530
(202) 252-2541 – ***Please note new number***
(202) 514-8780 fax
Michelle.Lo2@usdoj.gov

From: Hans Bader [mailto:HBader@cei.org]
Sent: Monday, July 29, 2013 3:02 PM
To: Lo, Michelle (USADC)
Cc: Sam Kazman; Chris Horner
Subject: RE: CEI v. EPA, 13-0779 (BAH)

One final thing: My colleagues are curious and want an answer to the following question before we dismiss the case: How can there be no responsive records (as stated by EPA in its no-records response, and echoed in the answer), that is, no text messages, when EPA has elsewhere produced documents to us saying that Ms. McCarthy sent hundreds of text messages using her EPA device (see the attached administrative response by EPA to Chris Horner's FOIA request – the first attached file is EPA's cover letter in response to that request, and the second is its substantive response)? I'd like to get that clarification on that issue before filing the stipulation I sent earlier.

Thanks,

Hans Bader
CEI

From: Hans Bader
Sent: Monday, July 29, 2013 12:17 PM
To: 'Lo, Michelle (USADC)'
Cc: Sam Kazman
Subject: RE: CEI v. EPA, 13-0779 (BAH)

Oops. The draft stipulation I sent in the below email had the wrong docket number on it. That has been fixed in the attached draft stipulation.

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Sent: Monday, July 29, 2013 12:11 PM
To: 'Lo, Michelle (USADC)'
Cc: Sam Kazman
Subject: RE: CEI v. EPA, 13-0779 (BAH)

Chris Horner remains very skeptical of the no-records response. Nevertheless, it seems to me that it may not be worth the candle to keep litigating this particular case, as a prudential matter.

Accordingly, plaintiff would be willing to file the attached stipulation of dismissal. If this is acceptable to you, then it can be filed with the court, and it will not be necessary to set a briefing schedule.

Sorry for the delay in responding.

Thank you.

Hans Bader
Competitive Enterprise Institute
(202) 331-2278
hbader@cei.org

From: Lo, Michelle (USADC) [mailto:Michelle.Lo2@usdoj.gov]
Sent: Monday, July 29, 2013 10:11 AM
To: Hans Bader
Subject: RE: CEI v. EPA, 13-0779 (BAH)

Dear Hans:

Per Judge Howell's Standing Order, the parties are to jointly prepare and submit a report indicating whether the agency has made a final determination on compliance with the FOIA request at issue and propose a schedule for the filing of dispositive motions within 14 days after any defendant appears, or by this Friday, August 2. As you know, the EPA issued a "no records" response to CEI's FOIA request on May 31, 2013. Provided CEI intends to proceed with this litigation, we propose the following briefing schedule:

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CEI's Opposition to EPA's Motion for Summary Judgment	October 16, 2013
EPA's Reply	November 6, 2013

Please let me know if the above proposal is agreeable to you. Thank you.

Michelle Lo

Assistant United States Attorney
Civil Division
555 4th Street, N.W.
Washington, D.C. 20530
(202) 252-2541 – ***Please note new number***
(202) 514-8780 fax
Michelle.Lo2@usdoj.gov

From: Hans Bader [mailto:HBader@cei.org]
Sent: Wednesday, July 17, 2013 6:06 PM
To: Lo, Michelle (USADC)
Subject: RE: CEI v. EPA, 13-0779 (BAH)

I am still waiting to hear back. Sorry about the delay.

From: Lo, Michelle (USADC) [mailto:Michelle.Lo2@usdoj.gov]
Sent: Wednesday, July 17, 2013 6:00 PM
To: Hans Bader
Subject: RE: CEI v. EPA, 13-0779 (BAH)

Hans:

Have you had a chance to discuss with your colleagues whether CEI intends to move forward with this litigation in light of the EPA's no records response?

Thanks,
Michelle

From: Lo, Michelle (USADC)
Sent: Thursday, July 11, 2013 4:12 PM
To: Hans Bader <HBader@cei.org> (HBader@cei.org)
Subject: CEI v. EPA, 13-0779 (BAH)

Hans:

Attached is the EPA's response to CEI's FOIA request for "copies of all text messages sent by Assistant Administrator for Air and Radiation Gina McCarthy on a mobile telephone provided for her use by the Agency" that I was referring to on our call just now. Please let me know if CEI believes that further litigation of this case will be necessary in light of the EPA's no records response. Thank you.

<< File: Final Response 6005.pdf >>

Michelle Lo
Assistant United States Attorney
Civil Division
555 4th Street, N.W.
Washington, D.C. 20530
(202) 514-5134; (202) 514-8780 fax
Michelle.Lo2@usdoj.gov

From: Lo, Michelle (USADC)
To: Kelly, Lynn
Subject: RE: Case dismissed pursuant to stipulation you sent Tuesday RE: CEI v. EPA, 13-0779 (BAH)
Date: Friday, September 13, 2013 12:31:06 PM

(b) (5) DPP, (b) (5) ACP, (b) (5) AWP [redacted]

[redacted]

-----Original Message-----
From: Kelly, Lynn [mailto:Kelly.Lynn@epa.gov]
Sent: Friday, September 13, 2013 12:21 PM
To: Lo, Michelle (USADC)
Subject: RE: Case dismissed pursuant to stipulation you sent Tuesday RE: CEI v. EPA, 13-0779 (BAH)

(b) (5) DPP, (b) (5) ACP, (b) (5) AWP [redacted]

[redacted]

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.

-----Original Message-----
From: Lo, Michelle (USADC) [mailto:Michelle.Lo2@usdoj.gov]
Sent: Friday, September 13, 2013 12:13 PM
To: Kelly, Lynn
Subject: FW: Case dismissed pursuant to stipulation you sent Tuesday RE: CEI v. EPA, 13-0779 (BAH)

Lynn: (b) (5) DPP, (b) (5) ACP, (b) (5) AWP [redacted] Thanks.

-----Original Message-----
From: Hans Bader [mailto:HBader@cei.org]
Sent: Friday, September 13, 2013 11:21 AM
To: Lo, Michelle (USADC)
Cc: Chris Horner; Sam Kazman
Subject: Case dismissed pursuant to stipulation you sent Tuesday RE: CEI v. EPA, 13-0779 (BAH)

OK. I have filed the stipulation you drafted and sent on Tuesday. It is attached.

(I changed the dates from September 10 to September 13 as in the certificate of service, but otherwise, it is exactly as you sent it).

Have a nice weekend.

-----Original Message-----
From: Lo, Michelle (USADC) [mailto:Michelle.Lo2@usdoj.gov]
Sent: Thursday, September 12, 2013 5:50 PM
To: Hans Bader
Cc: Chris Horner; Sam Kazman
Subject: Re: CEI v. EPA, 13-0779 (BAH)

I am glad that we have been able to have productive discussions to resolve this matter, and I look forward to continuing our amicable relationship in any future cases. However, this is not the first time that I have understood the parties to have reached an agreement on the terms of the dismissal, only to learn of another change that you require. I think this should be a straightforward dismissal; the publicly filed answer already explains the no records response, so I do not believe the additional sentence is necessary. I am available to discuss if you would like.

On Sep 12, 2013, at 5:10 PM, "Hans Bader"
<HBader@cei.org<mailto:HBader@cei.org>> wrote:

Here is the attached file I meant to send. (It fixes the date to tomorrow's date from September 10. it also corrects inconsistent capitalization of "Plaintiff" and "Defendant" in the version I sent you at 5:04 p.m. and substitutes "Plaintiff" for the word "CEI" to be consistent). Sorry about that!

Thanks,

Hans Bader
202-331-2278

From: Hans Bader
Sent: Thursday, September 12, 2013 5:04 PM
To: 'Lo, Michelle (USADC)'; Chris Horner
Cc: Sam Kazman
Subject: RE: CEI v. EPA, 13-0779 (BAH)

Would you object to us filing the stipulation of dismissal, with the addition of a recital of what you told us to explain why we are dismissing, to wit, adding the following sentence memorializing what you told us earlier:

Plaintiff agrees to do so because it has been advised by defendant that there are no responsive records, in light of the fact that (1) to the best of her recollection, Ms. McCarthy used the texting function on her EPA phone for personal purposes only and not to conduct Agency business; and (2) none of her texts over the period encompassing the 18 specific dates at issue in plaintiff's FOIA request (July 9, 2009, to June 29,
2012) were preserved.
We would be pleased to file such a stipulation of dismissal. (With the recital added, it is attached).

Thanks,

Hans

From: Lo, Michelle (USADC)
[mailto:Michelle.Lo2@usdoj.gov]<mailto:[mailto:Michelle.Lo2@usdoj.gov]>
Sent: Tuesday, September 10, 2013 12:22 PM
To: Hans Bader; Chris Horner
Cc: Sam Kazman
Subject: RE: CEI v. EPA, 13-0779 (BAH)

Thank you. We had exchanged a draft stipulation of dismissal at the time our discussions began, so I'm attaching it here with a revision to my new phone number. I'll look out for the filing of the stipulation in a day or two.

Michelle Lo
Assistant United States Attorney
Civil Division
555 4th Street, N.W.
Washington, D.C. 20530
(202) 252-2541 - Please note new number
(202) 514-8780 fax
Michelle.Lo2@usdoj.gov<mailto:Michelle.Lo2@usdoj.gov>

From: Hans Bader [mailto:HBader@cei.org]<mailto:[mailto:HBader@cei.org]>
Sent: Tuesday, September 10, 2013 12:17 PM
To: Lo, Michelle (USADC); Chris Horner
Cc: Sam Kazman
Subject: RE: CEI v. EPA, 13-0779 (BAH)

OK. We will dismiss (I am busy writing a brief in another case, but will be done with that in a day or two, and can execute a dismissal notice then).

From: Lo, Michelle (USADC) [mailto:Michelle.Lo2@usdoj.gov]
Sent: Tuesday, September 10, 2013 12:14 PM
To: Chris Horner
Cc: Hans Bader; Sam Kazman
Subject: RE: CEI v. EPA, 13-0779 (BAH)

If you could please let me know by this afternoon whether you will be dismissing this case, I would appreciate it. Under the current schedule, our opening brief is due on Monday, September 16, so we will need to plan accordingly since Judge Howell requires any extension motions to be filed at least four days prior to the deadline.

From: Chris Horner
[mailto:chornerlaw@aol.com]<mailto:[mailto:chornerlaw@aol.com]>
Sent: Monday, September 09, 2013 4:43 PM
To: Lo, Michelle (USADC)
Cc: HBader@cei.org<mailto:HBader@cei.org>;
SKazman@cei.org<mailto:SKazman@cei.org>
Subject: Re: CEI v. EPA, 13-0779 (BAH)

Ok. Thank you.

Sent from my iPhone

On Sep 9, 2013, at 4:37 PM, "Lo, Michelle (USADC)"
<Michelle.Lo2@usdoj.gov<mailto:Michelle.Lo2@usdoj.gov>> wrote:
I had hoped to avoid this very problem, which is why I thought it would be productive for us to discuss over the phone. I don't think there is any ambiguity in my emails, but, yes, I can confirm again that I am saying the approximately three-year period from July 9, 2009 to June 29, 2012.

Thanks,
Michelle

From: Chris Horner [mailto:chornerlaw@aol.com]
Sent: Monday, September 09, 2013 4:21 PM
To: Lo, Michelle (USADC); HBader@cei.org<mailto:HBader@cei.org>
Cc: SKazman@cei.org<mailto:SKazman@cei.org>
Subject: Re: CEI v. EPA, 13-0779 (BAH)

I'm sorry but I keep reading two meanings in most of these messages.
Please confirm you are saying the approximately three-year period from July 9, 2009 to June 29, 2012?

Best,
Chris Horner
****
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: Lo, Michelle (USADC) (USADC)
<Michelle.Lo2@usdoj.gov<mailto:Michelle.Lo2@usdoj.gov>>
To: Hans Bader <HBader@cei.org<mailto:HBader@cei.org>>; Chris Horner <chornerlaw@aol.com<mailto:chornerlaw@aol.com>>
Cc: Sam Kazman <SKazman@cei.org<mailto:SKazman@cei.org>>
Sent: Mon, Sep 9, 2013 4:17 pm
Subject: RE: CEI v. EPA, 13-0779 (BAH)
Yes, I mean all the dates between the period from July 9, 2009, to June 29, 2012.

From: Hans Bader [mailto:HBader@cei.org<mailto:HBader@cei.org?>]
Sent: Monday, September 09, 2013 3:51 PM
To: Lo, Michelle (USADC); Chris Horner
Cc: Sam Kazman
Subject: RE: CEI v. EPA, 13-0779 (BAH)

Thanks. By "encompassing," you mean not just the 18 dates, but also the interstitial dates between them, right? (When we spoke over the phone, I did not think in detail over what was meant by the words "entire period" when you said at that time, "none of her texts over the entire period . . .", although this is still helpful). Thanks.

From: Lo, Michelle (USADC) [mailto:Michelle.Lo2@usdoj.gov]
Sent: Monday, September 9, 2013 3:46 PM
To: Chris Horner; Hans Bader
Cc: Sam Kazman
Subject: RE: CEI v. EPA, 13-0779 (BAH)

Chris,

I was not able to reach you just now, but I did speak with Hans and had a beneficial discussion with him. Although the requested clarification in your August 1 email goes beyond the scope of CEI's FOIA request, which seeks only text messages sent by Ms. McCarthy on the 18 specific dates, the EPA is willing to respond in the interest of reaching an amicable resolution. The agency's position is as follows:

To the very best of her recollection, Ms. McCarthy used the texting function on her EPA phone for personal purposes only and not to conduct Agency business. None of her texts over the period encompassing the 18 specific dates at issue in CEI's FOIA request (July 9, 2009, to June 29, 2012) were preserved.

We believe this should clarify any remaining ambiguity and obviate the need for further litigation. I am of course available to discuss further if you think that would be helpful. I would appreciate it if you can let me know by tomorrow if this resolves all outstanding issues.

Thanks,
Michelle

From: Lo, Michelle (USADC)
Sent: Monday, September 09, 2013 11:28 AM
To: 'Chris Horner'; HBader@cei.org<mailto:HBader@cei.org>
Cc: SKazman@cei.org<mailto:SKazman@cei.org>

Subject: RE: CEI v. EPA, 13-0779 (BAH)

Yes, I think there is progress on this issue, and it would be helpful for us to have a brief discussion. Please let me know when you are available. Thanks.

From: Chris Horner [mailto:chornerlaw@aol.com]
Sent: Monday, September 09, 2013 11:24 AM
To: Lo, Michelle (USADC); HBader@cei.org<mailto:HBader@cei.org>
Cc: SKazman@cei.org<mailto:SKazman@cei.org>
Subject: Re: CEI v. EPA, 13-0779 (BAH)

The below is where I think things were when we left off. FYI

From my 8/01 email:

we have only sought one clear statement, I *think* you may just clarified the ambiguity as explained below. But if you plainly state what is implied we can dismiss.
Below you more strongly imply what seemed the implication before, but is still not stated outright with no room for misunderstanding. That is that Ms. McCarthy *only* used the texting function on her EPA phone for personal messages; and because she never used it for work this is why EPA has preserved none of her texts.
If that is what you were saying, would you please confirm that and that this is also EPA's position. In that case, you need not take any further questions to EPA and I accept the 'no records' response as sufficient such that we will dismiss.

Is there any progress on this?

Best,
Chris Horner

-----Original Message-----
From: Lo, Michelle (USADC) (USADC)
<Michelle.Lo2@usdoj.gov<mailto:Michelle.Lo2@usdoj.gov>>
To: Hans Bader <HBader@cei.org<mailto:HBader@cei.org>>; Chris Horner <chornerlaw@aol.com<mailto:chornerlaw@aol.com>>
Cc: Sam Kazman <SKazman@cei.org<mailto:SKazman@cei.org>>
Sent: Fri, Aug 16, 2013 1:51 pm
Subject: RE: CEI v. EPA, 13-0779 (BAH)
My apologies for the delay, I am still waiting to hear from EPA. I think there are availability issues due to this being August, but I will get back to you as soon as I can.

From: Hans Bader [mailto:HBader@cei.org<mailto:HBader@cei.org?>]
Sent: Friday, August 16, 2013 1:48 PM
To: Lo, Michelle (USADC); Chris Horner
Cc: Sam Kazman
Subject: RE: CEI v. EPA, 13-0779 (BAH)

Thanks. Hopefully, you will hear soon from EPA (your email below suggested you would hear from EPA by the week of August 5, which has now come and gone).

From: Lo, Michelle (USADC) [mailto:Michelle.Lo2@usdoj.gov]
Sent: Friday, August 02, 2013 4:09 PM
To: Chris Horner; Hans Bader
Cc: Sam Kazman
Subject: RE: CEI v. EPA, 13-0779 (BAH)

Thanks, Chris. It is looking like I will not be able to get a response from the Agency today (due to availability issues), so I think it makes most sense for us to go ahead and file a status report with the proposed briefing schedule

so we are in compliance with the Court's standing order. I should hear from EPA by early next week, so we can continue our discussions at that time. If the attached draft report is acceptable, let me know and I can take care of the filing.

From: chornerlaw@aol.com<mailto:chornerlaw@aol.com>
[mailto:chornerlaw@aol.com]
Sent: Friday, August 02, 2013 2:54 PM
To: Lo, Michelle (USADC); hbader@cei.org<mailto:hbader@cei.org>
Cc: skazman@cei.org<mailto:skazman@cei.org>
Subject: RE: CEI v. EPA, 13-0779 (BAH)

Yes I will, am in a mtg 3-5-something but will be able to email I think, cch Sent from my Verizon Wireless 4G LTE smartphone

"Lo, Michelle (USADC)" wrote:
Dear Chris,

I am waiting to hear back from the EPA regarding your follow-up inquiry below. I am hopeful that I will have a response to you today, but it may not be until around 5 pm due to various individuals' availability.
Will you be available then so we can figure out whether we will be filing a dismissal or a proposed briefing schedule at that time?

Thanks,
Michelle

From: chornerlaw@aol.com<mailto:chornerlaw@aol.com>
[mailto:chornerlaw@aol.com]
Sent: Thursday, August 01, 2013 10:05 PM
To: Lo, Michelle (USADC); hbader@cei.org<mailto:hbader@cei.org>
Cc: skazman@cei.org<mailto:skazman@cei.org>
Subject: RE: CEI v. EPA, 13-0779 (BAH)

Dear Michelle,
Rather than endless rounds of clarification, though we have only sought one clear statement, I *think* you may just clarified the ambiguity as explained below. But if you plainly state what is implied we can dismiss.
Below you more strongly imply what seemed the implication before, but is still not stated outright with no room for misunderstanding. That is that Ms. McCarthy *only* used the texting function on her EPA phone for personal messages; and because she never used it for work this is why EPA has preserved none of her texts.
If that is what you were saying, would you please confirm that and that this is also EPA's position. In that case, you need not take any further questions to EPA and I accept the 'no records' response as sufficient such that we will dismiss.
I look forward to your reply.
Best,
Chris
Sent from my Verizon Wireless 4G LTE smartphone

"Lo, Michelle (USADC)" wrote:
Chris,

I will take your request back to the agency, but I would like to be clear in what I will be communicating to the agency. The Agency has already explained that Ms. McCarthy uses text messaging for family and other personal business, not government business and that, because personal text messages are unrelated to Agency business, they

were not required to be preserved by the Agency. I am not sure how you read this statement to mean that Ms. McCarthy uses the texting function for EPA business. As I explained to Hans, this FOIA request deals with text messages on 18 specific dates, and we have already provided a very clear explanation for the "no records" response.

If what you are asking is - did Ms. McCarthy send ever any text messages that were work-related - I can ask the EPA if it would be willing to respond to this question even though it is well outside the scope of the FOIA request and does not alter the fact that the EPA did not locate any text messages on the 18 specific dates. If the EPA is willing to respond to the question of whether Ms. McCarthy ever sent any text messages that were work-related, can you represent that you will dismiss this case? As much as I think briefing would be an unnecessary use of the Court's and the parties' resources, it may be that we end up having to brief this matter rather than engage in endless rounds of clarification.

Best,
Michelle

From: Chris Horner [mailto:chornerlaw@aol.com]
Sent: Thursday, August 01, 2013 6:41 PM
To: HBader@cei.org<mailto:HBader@cei.org>; Lo, Michelle (USADC)
Cc: SKazman@cei.org<mailto:SKazman@cei.org>
Subject: Re: CEI v. EPA, 13-0779 (BAH)

Dera Michelle,

Please consider the following, in addition to what Hans has written you.

EPA's obligation is to demonstrate 'no records'. So far they have stated it. Demonstration is found in the bills for her device.

We have obtained what EPA claims to be the relevant (texting) portions of those bills, showing extensive texting activity, so extensive that it is thoroughly implausible that Ms. McCarthy didn't text on those dates.

After we calculated the probability (1 in 7.9 sextillion), we received your statement on EPA's behalf including the portion that is the basis for the ambiguity that Hans refers to and under which we cannot dismiss, but possibly can if you clarify what it is saying:

Ms. McCarthy uses text messaging to communicate with her family. Ms.
McCarthy uses email for government business, and text messaging for family and other personal business. These personal text messages are unrelated to Agency business, and thus were not required to be preserved by the Agency.
<CEI v EPA No 13-779 draft Stipulation of Dismissal with recital fixed by CEI.doc>

From: Anderson, Cindy
To: Kelly, Lynn
Subject: RE: Competitive Enterprise Institute v. United States Environmental Protection Agency 1:13cv1532 D. DC
Date: Wednesday, December 04, 2013 11:55:35 AM

Thanks!

Cindy
564-2690

-----Original Message-----
From: Kelly, Lynn
Sent: Wednesday, December 04, 2013 11:36 AM
To: Anderson, Cindy
Subject: FW: Competitive Enterprise Institute v. United States Environmental Protection Agency 1:13cv1532 D. DC

Here you go!

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.

-----Original Message-----
From: Kelly, Lynn
Sent: Thursday, October 17, 2013 1:42 PM
To: McDermott, Marna
Subject: RE: Competitive Enterprise Institute v. United States Environmental Protection Agency 1:13cv1532 D. DC

Thanks!

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.

-----Original Message-----
From: McDermott, Marna
Sent: Thursday, October 17, 2013 1:36 PM
To: Kelly, Lynn
Subject: RE: Competitive Enterprise Institute v. United States Environmental Protection Agency 1:13cv1532 D. DC

(b) (5) DPP, (b) (5) ACP, (b) (5) AWP .

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

-----Original Message-----
From: Kelly, Lynn

Sent: Thursday, October 17, 2013 1:35 PM
To: McDermott, Marna
Subject: RE: Competitive Enterprise Institute v. United States Environmental Protection Agency 1:13cv1532 D. DC

(b) (5) DPP, (b) (5) ACP, (b) (5) AWP [redacted] Thanks!

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.

-----Original Message-----
From: McDermott, Marna
Sent: Thursday, October 17, 2013 1:08 PM
To: Kelly, Lynn; Minoli, Kevin; Miller, Kevin
Subject: RE: Competitive Enterprise Institute v. United States Environmental Protection Agency 1:13cv1532 D. DC

(b) (5) DPP, (b) (5) ACP, (b) (5) AWP [redacted]

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

-----Original Message-----
From: Kelly, Lynn
Sent: Thursday, October 17, 2013 12:47 PM
To: Minoli, Kevin; Miller, Kevin; McDermott, Marna
Subject: RE: Competitive Enterprise Institute v. United States Environmental Protection Agency 1:13cv1532 D. DC

Kevin,

(b) (5) DPP, (b) (5) ACP, (b) (5) AWP [redacted]

(b) (5) DPP, (b) (5) ACP, (b) (5) AWP [redacted]

[redacted]

[redacted]

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.

-----Original Message-----
From: Minoli, Kevin
Sent: Thursday, October 17, 2013 11:33 AM
To: Miller, Kevin; McDermott, Marna
Cc: Kelly, Lynn
Subject: RE: Competitive Enterprise Institute v. United States Environmental Protection Agency 1:13cv1532 D. DC

(b) (5) DPP, (b) (5) ACP, (b) (5) AWP [redacted]. Thanks, Kevin

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

-----Original Message-----
From: Miller, Kevin
Sent: Thursday, October 17, 2013 11:30 AM
To: Minoli, Kevin; McDermott, Marna
Cc: Kelly, Lynn
Subject: RE: Competitive Enterprise Institute v. United States Environmental Protection Agency 1:13cv1532 D. DC

(b) (5) DPP, (b) (5) ACP, (b) (5) AWP [redacted] Thanks.

Kevin

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: Minoli, Kevin
Sent: Thursday, October 17, 2013 11:04 AM
To: Miller, Kevin; McDermott, Marna
Subject: RE: Competitive Enterprise Institute v. United States Environmental Protection Agency 1:13cv1532 D. DC

Thanks. (b) (5) DPP, (b) (5) ACP, (b) (5) AWP [redacted]. Welcome back!

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

-----Original Message-----
From: Miller, Kevin
Sent: Thursday, October 17, 2013 10:50 AM
To: McDermott, Marna; Minoli, Kevin
Subject: FW: Competitive Enterprise Institute v. United States Environmental Protection Agency 1:13cv1532 D. DC

New CEI complaint concerning a text message FOIA. We are taking a look at this now. Lynn will be the lead.

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: Kelly, Lynn
To: Newton, Jonathan; Wachter, Eric
Subject: RE: Competitive Enterprise Institute v. United States Environmental Protection Agency 1:13cv1532 D. DC
Date: Thursday, October 17, 2013 3:03:00 PM

(b) (5) DPP, (b) (5) ACP, (b) (5) AWP [redacted]

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: Newton, Jonathan
Sent: Thursday, October 17, 2013 3:00 PM
To: Kelly, Lynn; Wachter, Eric
Subject: RE: Competitive Enterprise Institute v. United States Environmental Protection Agency 1:13cv1532 D. DC

Thanks Lynn,

(b) (5) DPP, (b) (5) ACP, (b) (5) AWP [redacted]

[redacted]?

Jonathan

-----Original Message-----
From: Kelly, Lynn
Sent: Thursday, October 17, 2013 1:03 PM
To: Newton, Jonathan
Cc: Wachter, Eric
Subject: FW: Competitive Enterprise Institute v. United States Environmental Protection Agency 1:13cv1532 D. DC

FYI guys - (b) (5) DPP, (b) (5) ACP, (b) (5) AWP [redacted]

[redacted]

[redacted]

(b) (5) DPP, (b) (5) ACP, (b) (5) AWP [redacted]

[redacted]

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.

-----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: Anderson, Cindy
To: Nguyen, Quoc
Cc: Kelly, Lynn; Miller, Kevin
Subject: RE: Computer disability and Declarations to be filed
Date: Thursday, December 12, 2013 9:12:42 AM
Attachments: draft DECLARATION Matt Fritz (cha edits later 12.11.13).docx (b) (5) DPP, (b) (5) ACP, (b) (5) AWP
draft REILLY Decl 12.11 13 cha w.ILPG edits.docx
image001.png
Importance: High

(b) (5) DPP, (b) (5) ACP, (b) (5) AWP

Cindy
564-2690

From: Nguyen, Quoc
Sent: Thursday, December 12, 2013 9:00 AM
To: Anderson, Cindy
Cc: Kelly, Lynn; Miller, Kevin
Subject: RE: Computer disability and Declarations to be filed

Hi Cindy,

(b) (5) DPP, (b) (5) ACP, (b) (5) AWP

Thanks,
Quoc

Quoc P. Nguyen
Office of General Counsel
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20010
202-564-6343

CONFIDENTIAL communication for internal deliberations only; may contain deliberative, attorney-client, attorney work product, or otherwise privileged material; do not distribute outside EPA or DOJ.

From: Anderson, Cindy
Sent: Wednesday, December 11, 2013 4:22 PM
To: Nguyen, Quoc
Cc: Kelly, Lynn; Miller, Kevin; Minoli, Kevin
Subject: Computer disability and Declarations to be filed
Importance: High

Thanks Quoc; you're right. That was an issue several weeks ago and someone (very good) from EZTech was able to help; he also cleaned up lots of programs that are unnecessary and contributing to the extreme slow-down.

Today I've had 2 technicians trying to clear up similar issues w/o success. I'm hoping I'll have the use of a loaner tomorrow that will allow me to do the work necessary for (b) (5) DPP, (b) (5) ACP, (b) (5) AWP

(b) (5) DPP, (b) (5) ACP, (b) (5) AWP [redacted]

[redacted]

[redacted]

Thanks!

Cindy
564-2690

From: Nguyen, Quoc
Sent: Wednesday, December 11, 2013 2:13 PM
To: Anderson, Cindy
Subject: RE: Request EPA-HQ-2013-010171- Charles Grisham

Do you have papers around the computer vents? Sometimes this happens when the computer can't properly cool down.
Q

From: Anderson, Cindy
Sent: Wednesday, December 11, 2013 2:09 PM
To: Nguyen, Quoc; Bruce, Barbara; Miller, Kevin
Subject: RE: Request EPA-HQ-2013-010171- Charles Grisham

Thanks all.

My computer is operating at full throttle (almost 100% of capacity) for no apparent reason and, while EZTech has opened a ticket in response to my emailed request, they now will not answer the phone – the number is busy when you call.

[redacted] (b) (5) DPP, (b) (5) ACP, (b) (5) AWP [redacted]

Cindy
564-2690

From: Nguyen, Quoc
Sent: Wednesday, December 11, 2013 2:02 PM
To: Bruce, Barbara; Miller, Kevin; Anderson, Cindy
Subject: FW: Request EPA-HQ-2013-010171- Charles Grisham
Importance: High

All,

Cindy was assigned this appeal from Mr. Grisham. Kevin, do you have the time to review and respond? Cindy is buried right now.

Thanks,
Quoc

From: Warden, Vivian
Sent: Wednesday, December 11, 2013 1:56 PM
To: Miller, Kevin; Bruce, Barbara; McLendon, Wanda; Lane, Leticia
Cc: Nguyen, Quoc
Subject: RE: Request EPA-HQ-2013-010171- Charles Grisham
Importance: High

Kevin, On 11/01/13 HQ OSWER (Wanda McLendon, FOIA Coordinator, 566-1917) Dana Stalcup responded to Mr. Grisholm (via FOIAonline) informing that the request was being transferred to Region 6.

From: Miller, Kevin
Sent: Wednesday, December 11, 2013 1:34 PM
To: Bruce, Barbara; Warden, Vivian; Schena, Cristeen; McLendon, Wanda; Lane, Leticia
Cc: Nguyen, Quoc
Subject: RE: Request EPA-HQ-2013-010171- Charles Grisham

Thanks Barbara. (b) (5) DPP, (b) (5) ACP [redacted]

[redacted]. Leticia – who should we work with in R6? Vivian – who should we work with in HQ? Thanks.

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

From: Bruce, Barbara
Sent: Wednesday, December 11, 2013 12:16 PM
To: Warden, Vivian; Schena, Cristeen; McLendon, Wanda; Lane, Leticia
Cc: Miller, Kevin
Subject: RE: Request EPA-HQ-2013-010171- Charles Grisham

(b) (5) DPP, (b) (5) ACP [redacted]

From: Warden, Vivian
Sent: Monday, December 09, 2013 12:22 PM
To: Schena, Cristeen; McLendon, Wanda
Cc: Bruce, Barbara
Subject: FW: Request EPA-HQ-2013-010171- Charles Grisham

From: Bruce, Barbara
Sent: Monday, December 09, 2013 11:34 AM
To: Warden, Vivian
Subject: RE: Request EPA-HQ-2013-010171- Charles Grisham

(b) (5) DPP, (b) (5) ACP [redacted]

From: Warden, Vivian
Sent: Monday, December 09, 2013 9:48 AM
To: Bruce, Barbara
Subject: RE: Request EPA-HQ-2013-010171- Charles Grisham

Appeal is EPA-HQ-2014-000826.
Under FOIA request EPA-HQ-2013-010171 you would click on the Case File tab, then click on the Appeals tab and it is there.

From: Bruce, Barbara
Sent: Monday, December 09, 2013 9:13 AM
To: Warden, Vivian
Subject: RE: Request EPA-HQ-2013-010171- Charles Grisham

Vivian I check FOI Online for the appeal and didn't see one, do you know the appeal number?

From: Warden, Vivian
Sent: Monday, December 09, 2013 9:06 AM
To: Bruce, Barbara
Subject: RE: Request EPA-HQ-2013-010171- Charles Grisham

Thanks, Barbara. Please include the other names on the e-mail when you do reply. Thanks

---

From: Bruce, Barbara
Sent: Monday, December 09, 2013 9:05 AM
To: Warden, Vivian
Subject: RE: Request EPA-HQ-2013-010171- Charles Grisham

Hi Viv - I am working at home today, (b) (5) DPP, (b) (5) ACP [redacted] I will get back to you ASAP

From: Warden, Vivian
Sent: Monday, December 09, 2013 8:58 AM
To: Bruce, Barbara
Cc: Lane, Leticia; McLendon, Wanda; Gottesman, Larry; Moran, Gloria; Ortiz, Diana; Patrick, Dwayne
Subject: Request EPA-HQ-2013-010171- Charles Grisham

Barbara, this is the request I e-mailed you about on 11/19. HQ OSWER asked that it be transferred to Region 6. (b) (5) DPP, (b) (5) ACP [redacted]

Please respond to all to let us know how we should proceed. Thanks, Barb.

From: Lane, Leticia
Sent: Sunday, December 08, 2013 7:24 PM
To: Warden, Vivian; McLendon, Wanda
Cc: Moran, Gloria; Ortiz, Diana; Patrick, Dwayne
Subject: RE: EPA-HQ-2013-010171- Charles Grisham

Any word on this request being transferred to R6.

Requester continues to communicate with Region 6 personnel on his request.

Please let us know.

Thank you,

Leticia Lane
U.S. EPA Region 6
Enterprise, Technology&Architecture Section (6MD-OE)
Regional Freedom of Information Act Officer
Phone: (214)665-7202
Fax: (214)665-2146
lane.leticia@epa.gov

From: Warden, Vivian
Sent: Wednesday, November 20, 2013 9:31 AM
To: McLendon, Wanda
Cc: Lane, Leticia
Subject: EPA-HQ-2013-010171

Wanda, (b) (5) DPP, (b) (5) ACP [redacted]. Also, please see e-mail below from Region 6 FOIA Officer. Thank you.

From: Lane, Leticia
Sent: Tuesday, November 19, 2013 8:22 AM
To: Stalcup, Dana; Alston, Bj
Cc: Warden, Vivian
Subject: FW: Response Email - reply from Grisham, member of public who submitted FOIA request EPA-HQ-2013-010171

It has been brought to our attention this FOIA request needs to be transferred to Region 6. Our program people are receiving emails from requester inquiring about the status of his request. I looked in FOIA Online and noticed in comments and a letter to requester that the request was to be transferred to Region 6, but we have not received. Also, before request is transferred to Region 6, can you please get an extension, since it shows overdue.

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From: Lane, Leticia
Sent: Monday, November 18, 2013 2:37 PM
To: Ortiz, Diana
Subject: RE: Response Email - reply from Grisham, member of public who submitted FOIA request EPA-HQ-2013-010171

Dee Dee,

This is a screen shot to this HQ FOIA request comments. Although HQ suggest to reassign to Region 6, we have not received. Then there is a letter HQ sent to Mr. Grisham (dated 11-01-13), letting him know his request was going to be transferred to Region 6. Did you want me to follow up with HQ FOIA Office and have them transfer?

Request Details

Status : *Final Preparation of Response ; Appealed* **Due Date :** *10/22/2013*

38

Submitted | Evaluation | Assignment | Processing | Closed

Tracking Number : EPA-HQ-2013-010171
Requester : charles grisham
Organization : N/A
Requester Has Account : Yes

Submission Details | Case File | Admin Cost | Assigned Tasks | Comments | Review

Date / Time	User Name	Detail
10/22/2013 11:03 AM	Wanda McLendon	
This is a reassignment, not a close out. Thanks.		
10/18/2013 12:23 PM	Barbara J. Alston	
This request should be reassigned to Region 6, Stephen Tzhone is the RPM for this site.		

BACK TO SEARCH RESULTS

Thank you,

Leticia Lane
U.S. EPA Region 6
Enterprise, Technology&Architecture Section (6MD-OE)
Regional Freedom of Information Act Officer
Phone: (214)665-7202
Fax: (214)665-2146
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From: Ortiz, Diana
Sent: Monday, November 18, 2013 2:22 PM
To: Lane, Leticia
Subject: FW: Response Email - reply from Grisham, member of public who submitted FOIA request EPA-HQ-2013-010171

Diana Ortiz
Superfund FOIA Coordinator
Information Management Team (6SF-VI)
(214) 665-7315

From: Tzhone, Stephen
Sent: Monday, November 18, 2013 2:16 PM
To: Sanchez, Carlos; Faultry, Charles
Cc: Moran, Gloria; Peycke, Mark; Ragon, Derek; Patrick, Dwayne; Ortiz, Diana
Subject: FW: Response Email - reply from Grisham, member of public who submitted FOIA request EPA-HQ-2013-010171

What do we do with this? Curt is requesting in writing an "acknowledgement" or "resolution" of his FOIA request EPA-HQ-2013-010171.

He just tried calling me on my cell phone and he also called Gloria's house phone in the past as well.

From: CC Grisham (b) (6) [redacted]

Sent: Monday, November 18, 2013 1:56 PM
To: Tzhone, Stephen; Moran, Gloria
Cc: CC Grisham; Murray, Suzanne; Stalcup, Dana; Mason, Darryl; Reynolds, Thomas; Mccarthy, Gina; Gottesman, Larry; Bergman, Shawna; Curry, Ron; Patrick, Dwayne
Subject: Re: Response Email - reply from Grisham, member of public who submitted FOIA request EPA-HQ-2013-010171

Ms. Moran & Mr. Tzhone,

When I spoke with Mr. Tzhone on the date (November 1, 2013) of the below message to you both, Mr. Tzhone informed me that "everything at Arkwood has been put on hold" pending—among other thing, Mr. Tzhone informed me—resolution of my currently-open FOIA request EPA-HQ-2013-010171, which was submitted September 21, 2013, **over eight (8) weeks ago.**

According to Mr. Tzhone, the "hold" placed upon Arkwood's re-evaluation by EPA Region 6 "management" includes all technical risk-assessment, testing and work on the revised "conceptual site model" for Arkwood Inc. Superfund Site, which already was not expected to be completed before September 2014, already an inexcusable delay in Region 6 work production.

Now, it would appear, Arkwood Superfund Site is **BACK** in limbo, as it has been for decades due to EPA Region 6 "management" ineffectiveness, obfuscation and obstruction.

On November 1, 2013, in our telephone conversation, Mr. Tzhone also informed me that EPA Region 6 "management" had instructed you and apparently everyone else I have dealt with at EPA Region 6 **NOT** to take any action regarding my requests or communications **t** they are in writing.

It is evident to me that Region 6 "management" will not take action on my requests **even when they are in writing**, as this instance and many others over the years will attest.

Mr. Tzhone's information was the reason I wrote to you below on November 1, 2013, requesting ***in writing*** action from you to resolve EPA's unresponsiveness to my open FOIA request EPA-HQ-2013-010171.

My message to you below from over two weeks ago was **neither answered nor acknowledged by either of you** in any way.

Please inform me **AS SOON AS POSSIBLE WHEN OR IF** EPA will be fulfilling its obligation under law to provide me with **ALL** documents that are responsive under the Freedom of Information Act to my open request EPA-HQ-2013-010171.

Sincerely,

Charles Curtis Grisham, Jr.

On Nov 1, 2013, at 2:12 PM, curt grisham <g(b) (6) [redacted] > wrote:

Dear Ms. Moran & Mr. Tzhone,

Sorry, I hadn't copied you before; my mistake.

Please follow up on this with HQ to request that HQ comply with their responsibility for this request directly from HQ and stop punting it back to R6.

Curt Grisham

Begin forwarded message:

From: CC Grisham (b) (6) [redacted] >
Date: October 18, 2013 at 12:43:15 CDT
To: "hq.foia@epa.gov" <hq.foia@epa.gov>
Cc: CC Grisham <(b) (6) [redacted] >
Subject: Fwd: Response Email - reply from Grisham, member of public who submitted FOIA request EPA-HQ-2013-010171

Begin forwarded message:

From: CC Grisham <(b) (6) [redacted] >

Subject: Re: Response Email - reply from Grisham, member of public who submitted FOIA request EPA-HQ-2013-010171

Date: October 18, 2013 9:41:33 AM PDT

To: hq.foia@epa.gov

Cc: CC Grisham (b) (6) [redacted] >, "Murray.suzanne@Epa.gov" <Murray.suzanne@Epa.gov>, Mallory.brenda@Epa.gov, Garbow.avi@Epa.gov, "mccarthy.gina@epa.gov" <mccarthy.gina@epa.gov>, lewis-seagraves.gloria@epa.gov, reynolds.thomas@epa.gov, Kyle Weaver <Kyle.Weaver@mail.house.gov>

Dear Anonymous EPA FOIA Request Responder Who Misspelled My Name:

I hereby formally appeal the below decision.

The original text of my FOIA request (EPA-HQ-2013-010171) quotes **directly** from Federal law (40 CFR Part 300 [FRL-3825-8] Final 55 FR 35502, 08/30/1990):

"The Headquarters docket contains HRS score sheets for each final site; a Documentation Record for each site describing the information used to compute the score; pertinent information for any site affected by special study waste or other requirements, or RCRA or other listing policies; a list of documents referenced in the Documentation Record; comments received; and the Agency's response to those comments. The Agency's responses are contained in the 'Support Document for the Revised National Priorities List Final Rule - August 1990.'"

I wish to receive **directly** from EPA Headquarters the above contents of the "Headquarters docket," even if it is duplicative of that held in the Region 6 docket.

The reason for my appeal here is twofold:

1) I wish to be able to compare the contents of the "Headquarters docket" to that of the Region 6 docket; and
2) The above-referenced Federal law clearly makes a distinction between the contents of the the two dockets and clearly implies that the contents of one is not identical to the contents of the other.

I request that EPA Headquarters please honor my original request **from Headquarters** within the usual and customary timeframe for such a FOIA request, as measured from September 21, 2013 (my original submission date) plus sixteen (16) days to offset the time during which EPA was shut down by Congressional brinksmanship.

Sincerely,

Charles Curtis Grisham, Junior

On Oct 18, 2013, at 6:27 AM, "hq.foia@epa.gov" <hq.foia@epa.gov> wrote:

10/18/2013 09:19 AM
FOIA Request: EPA-HQ-2013-010171
Charles C. Grisholm, Jr.
P.O. Box 31526
San Francisco, CA 94131-0526
(b) (6) [redacted]

Dear Mr. Grisholm,

In your Freedom of Information Act (FOIA) request, you asked for copies of the Hazard Ranking System (HRS) Documentation Record, the response to comments support document, and references related to the HRS scoring evaluation for the Arkwood, Inc. Superfund site. Because the reference documents are only available in the EPA Region 6 docket, we are transferring your request to our Region 6 office.

The Arkwood, Inc. site was added to the Superfund National Priorities List (NPL) in 1989. In 1996, all physical construction related to the site remedy was completed. The site is now in post-construction phase which includes, among other things, activities such as operating the remedy to address the contamination (e.g., ground water pump and treat); implementing, monitoring, and enforcing institutional controls; and a review of the implemented remedies at least every five years to ensure they continue to protect human health and the environment.

You may appeal this response to the National Freedom of Information Officer, U.S. EPA, FOIA and Privacy Branch, 1200 Pennsylvania Avenue, N.W. (2822T), Washington, DC 20460 (U.S. Postal Service Only), FAX: (202) 566-2147, E-mail: hq.foia@epa.gov. Only items mailed through the United States Postal Service may be delivered to 1200 Pennsylvania Avenue, NW. If you are submitting your appeal via hand delivery, courier service or overnight delivery, you must address your correspondence to 1301 Constitution Avenue, N.W., Room 6416J, Washington, DC 20004. Your appeal must be made in writing, and it must be submitted no later than 30 calendar days from the date of this letter. The Agency will not consider appeals received after the 30 calendar day limit. The appeal letter should include the RIN listed above. For quickest poss ble handling, the appeal letter and its envelope should be marked "Freedom of Information Act Appeal."

From: Kelly, Lynn
To: Anderson, Cindy
Subject: RE: Computer disability and Declarations to be filed
Date: Wednesday, December 11, 2013 5:11:00 PM
Attachments: draft DECLARATION Matt Fritz (12 2 13) sha lek comments.docx (b) (5) DPP, (b) (5) ACP, (b) (5) AWP
image001.png

(b) (5) DPP, (b) (5) ACP, (b) (5) AWP [redacted]

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: Anderson, Cindy
Sent: Wednesday, December 11, 2013 4:22 PM
To: Nguyen, Quoc
Cc: Kelly, Lynn; Miller, Kevin; Minoli, Kevin
Subject: Computer disability and Declarations to be filed
Importance: High

Thanks Quoc; you're right. That was an issue several weeks ago and someone (very good) from EZTech was able to help; he also cleaned up lots of programs that are unnecessary and contributing to the extreme slow-down.

Today I've had 2 technicians trying to clear up similar issues w/o success. I'm hoping I'll have the use of a loaner tomorrow that will allow me to do the work necessary for (b) (5) DPP, (b) (5) ACP, (b) (5) AWP [redacted]

Thanks!

Cindy
564-2690

From: Nguyen, Quoc
Sent: Wednesday, December 11, 2013 2:13 PM
To: Anderson, Cindy
Subject: RE: Request EPA-HQ-2013-010171- Charles Grisham

Do you have papers around the computer vents? Sometimes this happens when the computer can't properly cool down.
Q

From: Anderson, Cindy
Sent: Wednesday, December 11, 2013 2:09 PM
To: Nguyen, Quoc; Bruce, Barbara; Miller, Kevin
Subject: RE: Request EPA-HQ-2013-010171- Charles Grisham

Thanks all.

My computer is operating at full throttle (almost 100% of capacity) for no apparent reason and, while EZTech has opened a ticket in response to my emailed request, they now will not answer the phone – the number is busy when you call.

[redacted] (b) (5) DPP, (b) (5) ACP, (b) (5) AWP [redacted]

Cindy
564-2690

From: Nguyen, Quoc
Sent: Wednesday, December 11, 2013 2:02 PM
To: Bruce, Barbara; Miller, Kevin; Anderson, Cindy

Subject: FW: Request EPA-HQ-2013-010171- Charles Grisham
Importance: High

All,

Cindy was assigned this appeal from Mr. Grisham. Kevin, do you have the time to review and respond? Cindy is buried right now.

Thanks,
Quoc

From: Warden, Vivian
Sent: Wednesday, December 11, 2013 1:56 PM
To: Miller, Kevin; Bruce, Barbara; McLendon, Wanda; Lane, Leticia
Cc: Nguyen, Quoc
Subject: RE: Request EPA-HQ-2013-010171- Charles Grisham
Importance: High

Kevin, On 11/01/13 HQ OSWER (Wanda McLendon, FOIA Coordinator, 566-1917) Dana Stalcup responded to Mr. Grisholm (via FOIAonline) informing that the request was being transferred to Region 6.

From: Miller, Kevin
Sent: Wednesday, December 11, 2013 1:34 PM
To: Bruce, Barbara; Warden, Vivian; Schena, Cristeen; McLendon, Wanda; Lane, Leticia
Cc: Nguyen, Quoc
Subject: RE: Request EPA-HQ-2013-010171- Charles Grisham

Thanks Barbara. (b) (5) DPP, (b) (5) ACP [redacted]

[redacted]. Leticia – who should we work with in R6? Vivian – who should we work with in HQ? Thanks.

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

From: Bruce, Barbara
Sent: Wednesday, December 11, 2013 12:16 PM
To: Warden, Vivian; Schena, Cristeen; McLendon, Wanda; Lane, Leticia
Cc: Miller, Kevin
Subject: RE: Request EPA-HQ-2013-010171- Charles Grisham

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Cc: Bruce, Barbara
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To: Warden, Vivian
Subject: RE: Request EPA-HQ-2013-010171- Charles Grisham

Vivian, (b) (5) DPP, (b) (5) ACP [redacted].

From: Warden, Vivian
Sent: Monday, December 09, 2013 9:48 AM
To: Bruce, Barbara
Subject: RE: Request EPA-HQ-2013-010171- Charles Grisham

Appeal is EPA-HQ-2014-000826.
Under FOIA request EPA-HQ-2013-010171 you would click on the Case File tab, then click on the Appeals tab and it is there.

From: Bruce, Barbara
Sent: Monday, December 09, 2013 9:13 AM
To: Warden, Vivian
Subject: RE: Request EPA-HQ-2013-010171- Charles Grisham

Vivian I check FOI Online for the appeal and didn't see one, do you know the appeal number?

From: Warden, Vivian
Sent: Monday, December 09, 2013 9:06 AM
To: Bruce, Barbara
Subject: RE: Request EPA-HQ-2013-010171- Charles Grisham

Thanks, Barbara. Please include the other names on the e-mail when you do reply. Thanks

---

From: Bruce, Barbara
Sent: Monday, December 09, 2013 9:05 AM
To: Warden, Vivian
Subject: RE: Request EPA-HQ-2013-010171- Charles Grisham

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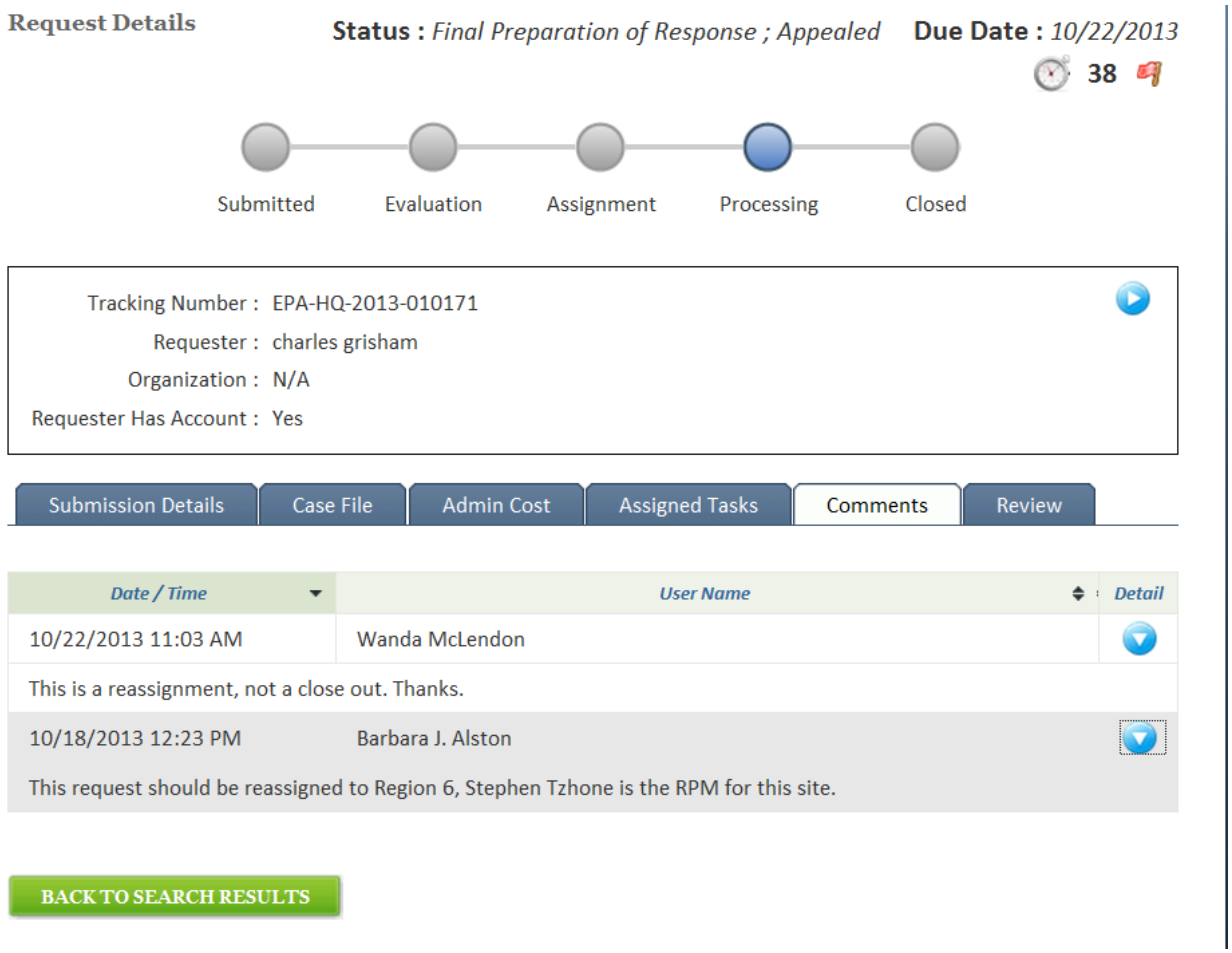

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Leticia Lane
U.S. EPA Region 6
Enterprise, Technology&Architecture Section (6MD-OE)
Regional Freedom of Information Act Officer
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Fax: (214)665-2146
lane.leticia@epa.gov

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Diana Ortiz
Superfund FOIA Coordinator
Information Management Team (6SF-VI)
(214) 665-7315

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Date: October 18, 2013 9:41:33 AM PDT

To: hq.foia@epa.gov

Cc: CC Grisham (b) (6) [redacted] >, "Murray.suzanne@Epa.gov" <Murray.suzanne@Epa.gov>, Mallory.brenda@Epa.gov, Garbow.avi@Epa.gov, "mccarthy.gina@epa.gov" <mccarthy.gina@epa.gov>, lewis-seagraves.gloria@epa.gov, reynolds.thomas@epa.gov, Kyle Weaver <Kyle.Weaver@mail.house.gov>

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I hereby formally appeal the below decision.

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Charles C. Grisholm, Jr.
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Dear Mr. Grisholm,

In your Freedom of Information Act (FOIA) request, you asked for copies of the Hazard Ranking System (HRS) Documentation Record, the response to comments support document, and references related to the HRS scoring evaluation for the Arkwood, Inc. Superfund site. Because the reference documents are only available in the EPA Region 6 docket, we are transferring your request to our Region 6 office.

The Arkwood, Inc. site was added to the Superfund National Priorities List (NPL) in 1989. In 1996, all physical construction related to the site remedy was completed. The site is now in post-construction phase which includes, among other things, activities such as operating the remedy to address the contamination (e.g., ground water pump and treat); implementing, monitoring, and enforcing institutional controls; and a review of the implemented remedies at least every five years to ensure they continue to protect human health and the environment.

You may appeal this response to the National Freedom of Information Officer, U.S. EPA, FOIA and Privacy Branch, 1200 Pennsylvania Avenue, N.W. (2822T), Washington, DC 20460 (U.S. Postal Service Only), FAX: (202) 566-2147, E-mail: hq.foia@epa.gov. Only items mailed through the United States Postal Service may be delivered to 1200 Pennsylvania Avenue,

NW. If you are submitting your appeal via hand delivery, courier service or overnight delivery, you must address your correspondence to 1301 Constitution Avenue, N.W., Room 6416J, Washington, DC 20004. Your appeal must be made in writing, and it must be submitted no later than 30 calendar days from the date of this letter. The Agency will not consider appeals received after the 30 calendar day limit. The appeal letter should include the RIN listed above. For quickest poss ble handling, the appeal letter and its envelope should be marked "Freedom of Information Act Appeal."

From: LindaE Green on behalf of FOIA HQ
To: Kelly, Lynn
Subject: RE: Final Response attached
Date: Monday, July 08, 2013 12:43:49 PM

(b) (5) DPP, (b) (5) ACP [redacted]

[redacted] *Green*
Office of Environmental Information
U.S. Environmental Protection Agency
(202) 566-1667
email: green.lindae@epa.gov

Lynn Kelly---07/08/2013 11:44:30 AM---Thank you Linda. (b) (5) DPP, (b) (5) ACP [redacted]

From: Lynn Kelly/DC/USEPA/US
To: FOIA HQ
Date: 07/08/2013 11:44 AM
Subject: RE: Final Response attached

Thank you Linda.

(b) (5) DPP, (b) (5) ACP [redacted]

Thanks,

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

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From: LindaE Green [mailto:Green.LindaE@epamail.epa.gov] **On Behalf Of** FOIA HQ
Sent: Monday, July 08, 2013 11:41 AM
To: Kelly, Lynn
Subject: Fw: Final Response attached

Lynn,

(b) (5) DPP, (b) (5) ACP [redacted]
Thank you.

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 07/08/2013 11:39 AM -----

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: Ketcham-Colwill, Nancy
To: Weinstock, Larry; Kelly, Lynn
Cc: Miller, Kevin
Subject: RE: Final Response attached
Date: Wednesday, July 10, 2013 10:22:51 AM

(b) (5) DPP, (b) (5) ACP [redacted]. Thanks.

From: Weinstock, Larry
Sent: Wednesday, July 10, 2013 9:04 AM
To: Kelly, Lynn; Ketcham-Colwill, Nancy
Cc: Miller, Kevin
Subject: RE: Final Response attached

(b) (5) DPP, (b) (5) ACP [redacted]

[redacted]

Thanks
Larry

From: Kelly, Lynn
Sent: Wednesday, July 10, 2013 8:55 AM
To: Ketcham-Colwill, Nancy; Weinstock, Larry
Cc: Miller, Kevin
Subject: RE: Final Response attached

(b) (5) DPP, (b) (5) ACP [redacted]

[redacted] How does that sound?

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

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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: Ketcham-Colwill, Nancy
Sent: Tuesday, July 09, 2013 6:23 PM
To: Kelly, Lynn; Weinstock, Larry
Cc: Miller, Kevin
Subject: RE: Final Response attached

Thanks, Lynn. (b) (5) DPP, (b) (5) ACP [redacted]?

From: Kelly, Lynn
Sent: Tuesday, July 09, 2013 4:50 PM
To: Weinstock, Larry; Ketcham-Colwill, Nancy
Cc: Miller, Kevin
Subject: RE: Final Response attached

(b) (5) DPP, (b) (5) ACP [redacted]?

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

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From: Weinstock, Larry
Sent: Tuesday, July 09, 2013 10:10 AM
To: Ketcham-Colwill, Nancy; Kelly, Lynn
Cc: Miller, Kevin
Subject: RE: Final Response attached

(b) (5) DPP, (b) (5) ACP [redacted]?

Larry

From: Ketcham-Colwill, Nancy
Sent: Monday, July 08, 2013 5:24 PM
To: Kelly, Lynn
Cc: Weinstock, Larry; Miller, Kevin
Subject: RE: Final Response attached

(b) (5) DPP, (b) (5) ACP [redacted]?

From: Kelly, Lynn
Sent: Monday, July 08, 2013 11:53 AM
To: Ketcham-Colwill, Nancy
Cc: Weinstock, Larry; Miller, Kevin
Subject: FW: Final Response attached

Nancy,

(b) (5) DPP, (b) (5) ACP [redacted]

Thanks, and I hope you had a pleasant holiday.

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

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From: Kelly, Lynn
Sent: Monday, July 08, 2013 11:46 AM
To: Weinstock, Larry
Subject: FW: Final Response attached

Larry,

(b) (5) DPP, (b) (5) ACP [redacted]

Thanks,

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

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From: LindaE Green [mailto:Green.LindaE@epamail.epa.gov] **On Behalf Of** FOIA HQ
Sent: Monday, July 08, 2013 11:41 AM
To: Kelly, Lynn
Subject: Fw: Final Response attached

Lynn,

(b) (5) DPP, (b) (5) ACP
Thank you.

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 07/08/2013 11:39 AM -----

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.

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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: Kelly, Lynn
Subject: RE: Front office ask: DUE COB WEDNESDAY!
Date: Wednesday, October 23, 2013 3:45:28 PM

Thanks Lynn –

1. CEI v. EPA (13-1074) invoices for Gina McCarthy text messages; MSJ due Nov. 14; drafting Declaration in advance (by Nov. 6) to send to AUSA.
2. (b) (5) DPP, (b) (5) ACP [redacted]

Cindy
564-2690

From: Kelly, Lynn
Sent: Wednesday, October 23, 2013 3:20 PM
To: OGC GLO ILPG
Subject: RE: Front office ask: DUE COB WEDNESDAY!

Reminder! Thanks.

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: Kelly, Lynn
Sent: Monday, October 21, 2013 4:08 PM
To: OGC GLO ILPG
Subject: Front office ask: DUE COB WEDNESDAY!

Hi everyone,

Kevin has asked me to help collect some information for the front office. (b) (5) DPP, (b) (5) ACP [redacted]

Finally, Let's plan to resume weekly meetings at your times with me unless you'd prefer a different approach. I think they are useful to funnel the non-urgent matters into a dedicated time slot to discuss, but I am open to freeing up that time if folks think it would be better spent another way. Just let me know. Thanks!

(b) (5) DPP, (b) (5) ACP

[redacted]

[redacted]

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: Kelly, Lynn
To: Miller, Kevin; Anderson, Cindy
Subject: RE: Heads up on a New FOAI Assignment (EPA-HQ-2014-002006) - FOIA re Text Messages
Date: Friday, January 17, 2014 9:12:00 AM

(b) (5) DPP, (b) (5) ACP [redacted]

[redacted]

[redacted]

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: Miller, Kevin
Sent: Friday, January 17, 2014 9:03 AM
To: Anderson, Cindy
Cc: Kelly, Lynn
Subject: RE: Heads up on a New FOAI Assignment (EPA-HQ-2014-002006) - FOIA re Text Messages

(b) (5) DPP, (b) (5) ACP [redacted]

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

From: Anderson, Cindy
Sent: Friday, January 17, 2014 9:02 AM
To: Miller, Kevin
Cc: Kelly, Lynn
Subject: RE: Heads up on a New FOAI Assignment (EPA-HQ-2014-002006) - FOIA re Text Messages

(b) (5) DPP, (b) (5) ACP [redacted]

[redacted]

[redacted]

(b) (5) DPP, (b) (5) ACP [redacted] ?

Cindy Anderson
EPA/OGC
(202) 564-2690

From: Miller, Kevin
Sent: Friday, January 17, 2014 9:00 AM
To: Anderson, Cindy
Cc: Kelly, Lynn
Subject: RE: Heads up on a New FOAI Assignment (EPA-HQ-2014-002006) - FOIA re Text Messages

(b) (5) DPP, (b) (5) ACP [redacted] ?

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

From: Anderson, Cindy
Sent: Friday, January 17, 2014 8:42 AM
To: Miller, Kevin
Cc: Kelly, Lynn
Subject: FW: Heads up on a New FOAI Assignment (EPA-HQ-2014-002006) - FOIA re Text Messages
Importance: High

Kevin -

(b) (5) DPP, (b) (5) ACP [redacted]

[redacted]

[redacted]

Cindy Anderson
EPA/OGC
(202) 564-2690

From: Anderson, Cindy
Sent: Thursday, January 16, 2014 9:18 PM
To: Minoli, Kevin

Subject: RE: Heads up on a New FOAI Assignment (EPA-HQ-2014-002006) - FOIA re Text Messages

(b) (5) DPP, (b) (5) ACP [redacted]

[redacted]

[redacted]

[redacted]

[redacted]

Cindy Anderson
EPA/OGC
(202) 564-2690

From: Minoli, Kevin
Sent: Thursday, January 16, 2014 6:11 PM
To: Anderson, Cindy; Miller, Kevin
Subject: RE: Heads up on a New FOAI Assignment (EPA-HQ-2014-002006) - FOIA re Text Messages

(b) (5) DPP, (b) (5) ACP [redacted]. 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: Thursday, January 16, 2014 5:12 PM
To: Minoli, Kevin; Miller, Kevin

Subject: RE: Heads up on a New FOAI Assignment (EPA-HQ-2014-002006) - FOIA re Text Messages

(b) (5) DPP, (b) (5) ACP [redacted]

Cindy Anderson
(202) 564-2690

From: Minoli, Kevin
Sent: Thursday, January 16, 2014 5:06 PM
To: Anderson, Cindy; Miller, Kevin
Subject: Fw: Heads up on a New FOAI Assignment (EPA-HQ-2014-002006) - FOIA re Text Messages

(b) (5) DPP, (b) (5) ACP [redacted] ? Thanks.

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

From: Dierker, Carl
Sent: Thursday, January 16, 2014 5:02:20 PM
To: Minoli, Kevin
Cc: Metcalf, Jill; Grantham, Nancy
Subject: FW: Heads up on a New FOAI Assignment (EPA-HQ-2014-002006) - FOIA re Text Messages

Hi Kevin – (b) (5) DPP, (b) (5) ACP [redacted]

Thanks,
Carl
****
Carl F. Dierker
Regional Counsel
U.S. EPA -- Region 1, New England
5 Post Office Square
Boston, Massachusetts 02109-3912
tel: 617-918-1091
fax: 617-918-0091
e-mail: dierker.carl@epa.gov

From: Grantham, Nancy
Sent: Tuesday, January 14, 2014 1:00 PM
To: Schena, Cristeen
Cc: Minoli, Kevin; Dierker, Carl; Metcalf, Jill
Subject: FW: Heads up on a New FOAI Assignment (EPA-HQ-2014-002006) - FOIA re Text Messages

Cris – (b) (5) DPP, (b) (5) ACP [redacted]

Thanks

ng

From: Diehl, Chris
Sent: Monday, January 13, 2014 9:12 PM
To: Grantham, Nancy
Cc: Giffen, Tom
Subject: FW: Heads up on a New FOAI Assignment (EPA-HQ-2014-002006) - FOIA re Text Messages

Nancy – (b)(5) DPP [redacted]

Thx Chris

Chris Diehl
Chief, Operations & Client Support Section
Desk: 617-918-1944
Cell: 857-829-8012

From: Giffen, Tom
Sent: Monday, January 13, 2014 10:38 AM
To: Diehl, Chris
Subject: FW: Heads up on a New FOAI Assignment (EPA-HQ-2014-002006) - FOIA re Text Messages

Chris,

(b)(5) DPP [redacted] Let me know if you need anything else.

Thanks,

Tom Giffen
Chief, Information Technology Section

EPA Region 1 OARM
5 Post Office Square, Suite 100
MailCode OARM0201
Boston, MA 02109-3912
617-918-1444

From: Little, Douglas
Sent: Monday, January 13, 2014 10:35 AM
To: Giffen, Tom
Subject: RE: Heads up on a New FOAI Assignment (EPA-HQ-2014-002006) - FOIA re Text Messages

Tom,

(b)(5) DPP [redacted]

From: Giffen, Tom
Sent: Thursday, January 09, 2014 8:54 AM
To: Little, Douglas
Subject: FW: Heads up on a New FOAI Assignment (EPA-HQ-2014-002006) - FOIA re Text Messages

Here is the chain covering the FOIA we discussed.

Thanks,

Tom Giffen
Chief, Information Technology Section
EPA Region 1 OARM

5 Post Office Square, Suite 100
MailCode OARM0201
Boston, MA 02109-3912
617-918-1444

From: Lee, Warren
Sent: Thursday, January 09, 2014 8:23 AM
To: Diehl, Chris
Cc: Giffen, Tom; Boudrot, Steve
Subject: RE: Heads up on a New FOAI Assignment (EPA-HQ-2014-002006) - FOIA re Text Messages

(b)(5) DPP [redacted]

From: Diehl, Chris
Sent: Thursday, January 09, 2014 7:26 AM
To: Lee, Warren
Cc: Giffen, Tom; Boudrot, Steve
Subject: Fw: Heads up on a New FOAI Assignment (EPA-HQ-2014-002006) - FOIA re Text Messages
Importance: High

(b)(5) DPP [redacted]

From: Grantham, Nancy
Sent: Thursday, January 09, 2014 6:18:53 AM
To: Diehl, Chris
Subject: Fw: Heads up on a New FOAI Assignment (EPA-HQ-2014-002006) - FOIA re Text Messages

(b)(5) DPP [redacted]

From: Schena, Cristeen
Sent: Wednesday, January 08, 2014 1:38:08 PM
To: Grantham, Nancy
Subject: FW: Heads up on a New FOAI Assignment (EPA-HQ-2014-002006) - FOIA re Text Messages

(b)(5) DPP [redacted]

Cris

From: Hamilton, Sabrina
Sent: Wednesday, January 08, 2014 1:31 PM
To: Lewis, Monica; Meekins, Tanya; Russell, Sherry; Painter, Michele; Newton, Jonathan; Bruce, Barbara

Cc: Faulkner, Martha; Hammond, Gloria; Weinstock, Larry; Schena, Cristeen
Subject: FW: Heads up on a New FOAI Assignment (EPA-HQ-2014-002006)

Monica,

Please assign a task for this FOIA case to Region 1 for coordination with OAR. Larry Weinstock is the point of contact and he and Jonathan Newton has provided feedback concerning this case in the emails below.

Tanya, Sherry, Michele, Jonathan and Barbara,

Please check FOIAonline for a "task" that was assigned to your office for coordination with OAR-IO. Please provide responsive document by January 16, 2014. If you have any questions, please contact Larry Weinstock. Thanks

Sabrina

Sabrina Hamilton
Air and Radiation Liaison Specialist
and FOIA Coordinator
Office of Air and Radiation - Correspondence Unit
U.S. Environmental Protection Agency (EPA)
1200 Pennsylvania Avenue, N.W. (6101-A)
Washington, D.C. 20460
Tel: (202) 564-1083
Fax: (202) 501-0600

From: Weinstock, Larry
Sent: Thursday, January 02, 2014 3:40 PM
To: McCabe, Janet; Goffman, Joseph; Russell, Sherry; Huang, Cindy; Meekins, Tanya; Painter, Michele
Cc: Noonan, Jenny; Stewart, Lori; Hamilton, Sabrina
Subject: Heads up on a New FOAI Assignment (EPA-HQ-2014-002006)

EPA has received the attached FOIA from Chris Horner. It is a follow-up from an earlier FOIA concerning Gina's text bill. (b)(5) DPP [redacted] As a result Mr. Horner is asking for all the text messages, on EPA provided cell phones from the following people:

1) **Joe Goffman,** Senior Counsel OAR

2) **Janet McCabe**

3) **Margo Oge**, OTAQ (retired late 2012)

4) **Cindy Huang**, Staff Assistant To the Assistant Administrator

5) Scott Fulton, former EPA General Counsel

6) Steve Page, Director, OAQPS, Research Triangle Park (RTP)

7) Peter Tsirigotis, Director, Sector Policies and Programs Division, OAR:OAQPS, RTP

8) Mlke Flynn, Director, Office of Radiation and Indoor Air, EPA HQ

9) Bob Perciasepe

10) Curt Spalding, Regional Administrator EPA Region

11) Nancy Grantham, Director, EPA Rl, Office of Public Affairs

12) Ira W. Leighton, former deputy RA, Region

(b) (5) DPP, (b) (5) ACP [redacted]

I will follow-up with the IT people to provide instructions on how to transfer any texts you may have to a form that can be reviewed and sent to the requestor.

Thanks
Larry Weinstock
Program Innovaiton Coordinator
Office of Air and Radiation
202-564-9226

From: Weinstock, Larry
Sent: Monday, December 30, 2013 2:39 PM
To: Faulkner, Martha; Stewart, Lori
Cc: Hamilton, Sabrina
Subject: RE: New FOAI Assignment (EPA-HQ-2014-002006)

Martha,

These emails are supposed to go to me not to Lori, accept as a cc. (b) (5) DPP, (b) (5) ACP [redacted]

Thanks
Larry

From: Faulkner, Martha
Sent: Monday, December 30, 2013 2:32 PM
To: Stewart, Lori

Cc: Weinstock, Larry; Hamilton, Sabrina
Subject: New FOAI Assignment (EPA-HQ-2014-002006)

Good Afternoon Lori ,

Please advise which office should be assigned this control. Thanks

Martha

From: Newton, Jonathan
Sent: Friday, December 27, 2013 1:59 PM
To: Lewis, Monica; Hamilton, Sabrina
Cc: Gottesman, Larry
Subject: HQ-2014-0002006 - Reassignment to OAR

Hi Monica and Sabrina,

This is a request seeking text messages from twelve individuals: Joe Goffman (OAR); Janet McCabe (OAR); Margo Oge (OAR); Cindy Huang (OAR); Steve Page (OAR); Peter Tsirigotis (OAR); Mike Flynn (OAR); Curt Spalding (R1); Nancy Grantham (R1); Bob Perciasepe (AO); Scott Fulton (Formerly OGC); and Ira W. Leighton (Formerly R1).

(b)(5) DPP [redacted]

Thanks

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: Weinstock, Larry
To: Kelly, Lynn
Cc: Ketcham-Colwill, Nancy
Subject: RE: Letter to Horner on texts
Date: Friday, May 31, 2013 10:54:33 AM
Attachments: Response Letter texting.final.docx (b) (5) DPP, (b) (5) ACP

(b) (5) DPP, (b) (5) ACP

Larry

From: Kelly, Lynn
Sent: Friday, May 31, 2013 10:53 AM
To: Weinstock, Larry
Cc: Ketcham-Colwill, Nancy
Subject: RE: Letter to Horner on texts

(b) (5) DPP, (b) (5) ACP
?

Lynn Kelly
Attorney-Advisor
General Law Office
Office of General Counsel
(202) 564-3266
Office # 7426V

From: Weinstock, Larry
Sent: Friday, May 31, 2013 10:04 AM
To: Kelly, Lynn
Cc: Ketcham-Colwill, Nancy
Subject: Letter to Horner on texts

(b) (5) DPP, (b) (5) ACP ?

From: Kelly, Lynn
To: Nguyen, Quoc
Subject: RE: Please update the Reg Review Agenda and additional info request
Date: Tuesday, November 19, 2013 2:26:00 PM
Attachments: GLO reg review template 110513 fixed lek.docx (b) (5) DPP, (b) (5) ACP [redacted]

(b) (5) DPP, (b) (5) ACP [redacted].

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: Nguyen, Quoc
Sent: Tuesday, November 19, 2013 11:07 AM
To: OGC GLO ILPG
Subject: Please update the Reg Review Agenda and additional info request

Hi All,

Please take a look at the attached reg review agenda and send me your updates on agenda items and litigation deadlines by **3:00 pm TODAY**.

Also, (b) (5) DPP [redacted]

Thanks!
Quoc

Case Name	Status	Deadline
(b) (5) DPP, (b) (5) ACP [redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]

(b) (5) DPP, (b) (5) ACP [redacted]	[redacted]	[redacted]

Quoc P. Nguyen
Office of General Counsel
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20010
202-564-6343

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From: Kelly, Lynn
To: Lo, Michelle (USADC)
Subject: RE: Quick update re: CEI text messages case
Date: Thursday, July 11, 2013 4:04:00 PM
Attachments: Horner (McCarthy Text Messages) Rqst (b).pdf
Final Response 6005 (1).pdf

(b) (5) DPP, (b) (5) ACP, (b) (5) AWP

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From: Lo, Michelle (USADC) [mailto:Michelle.Lo2@usdoj.gov]
Sent: Thursday, July 11, 2013 2:54 PM
To: Kelly, Lynn
Subject: RE: Quick update re: CEI text messages case

Lynn,

(b) (5) DPP, (b) (5) ACP, (b) (5) AWP

Thanks.

Michelle

From: Lo, Michelle (USADC)
Sent: Wednesday, July 10, 2013 3:21 PM
To: 'Kelly, Lynn'
Subject: RE: Quick update re: CEI text messages case

Hi Lynn,

(b) (5) DPP, (b) (5) ACP, (b) (5) AWP

Michelle

From: Kelly, Lynn [mailto:Kelly.Lynn@epa.gov]
Sent: Wednesday, July 10, 2013 11:07 AM
To: Lo, Michelle (USADC)
Subject: RE: Quick update re: CEI text messages case

Michelle,

(b) (5) DPP, (b) (5) ACP, (b) (5) AWP

(b) (5) DPP, (b) (5) ACP, (b) (5) AWP [redacted]

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From: Lo, Michelle (USADC) [mailto:Michelle.Lo2@usdoj.gov]
Sent: Tuesday, July 09, 2013 5:46 PM
To: Kelly, Lynn
Subject: RE: Quick update re: CEI text messages case

Hi Lynn,

(b) (5) DPP, (b) (5) ACP, (b) (5) AWP [redacted] Thanks.

Michelle

From: Kelly, Lynn [mailto:Kelly.Lynn@epa.gov]
Sent: Tuesday, July 02, 2013 5:23 PM
To: Lo, Michelle (USADC)
Subject: RE: Quick update re: CEI text messages case

Michelle,

(b) (5) DPP, (b) (5) ACP, (b) (5) AWP [redacted]? I am also here until about 6 tonight. Thanks!

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

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From: Kelly, Lynn
Sent: Monday, July 01, 2013 10:09 AM
To: 'Lo, Michelle (USADC)'
Subject: Quick update re: CEI text messages case

Michelle,

(b)(5) AWP, (b)(5) ACP [redacted]

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

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From:	Kelly, Lynn
To:	Nebeker, Mark (USADC)
Subject:	RE: Settlement offer in CEI v. EPA (13-1074) [billing for Gina McCarthy text messages]
Date:	Wednesday, January 29, 2014 4:35:00 PM
Attachments:	image001.png

(b) (5) DPP, (b) (5) ACP, (b) (5) AWP

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From: Nebeker, Mark (USADC) [mailto:Mark.Nebeker@usdoj.gov]
Sent: Wednesday, January 29, 2014 4:31 PM
To: Kelly, Lynn
Subject: RE: Settlement offer in CEI v. EPA (13-1074) [billing for Gina McCarthy text messages]

(b) (5) DPP, (b) (5) ACP, (b) (5) AWP

From: Kelly, Lynn [mailto:Kelly.Lynn@epa.gov]
Sent: Wednesday, January 29, 2014 4:31 PM
To: Nebeker, Mark (USADC)
Cc: Anderson, Cindy
Subject: RE: Settlement offer in CEI v. EPA (13-1074) [billing for Gina McCarthy text messages]

(b) (5) DPP, (b) (5) ACP, (b) (5) AWP

[redacted]

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: Nebeker, Mark (USADC) [mailto:Mark.Nebeker@usdoj.gov]
Sent: Wednesday, January 29, 2014 4:28 PM
To: Kelly, Lynn
Subject: FW: Settlement offer in CEI v. EPA (13-1074) [billing for Gina McCarthy text messages]

(b) (5) DPP, (b) (5) ACP, (b) (5) AWP ?

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: Anderson, Cindy
To: Kelly, Lynn
Subject: RE: draft cover letter to CEI w/release of text message invoice (12/6/13)
Date: Friday, December 06, 2013 2:17:54 PM
Attachments: updated draft CEI Release cover ltr 12.6.13.docx (b) (5) DPP, (b) (5) ACP, (b) (5) AWP

Lynn –

(b) (5) DPP, (b) (5) ACP, (b) (5) AWP [redacted]

Thanks again.

Cindy
564-2690

From: Kelly, Lynn
Sent: Friday, December 06, 2013 12:56 PM
To: Anderson, Cindy
Subject: RE: draft cover letter to CEI w/release of text message invoice (12/6/13)

(b) (5) DPP, (b) (5) ACP, (b) (5) AWP [redacted]. Let me know if you want to discuss!

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From: Anderson, Cindy
Sent: Friday, December 06, 2013 12:00 PM
To: Kelly, Lynn
Subject: draft cover letter to CEI w/release of text message invoice (12/6/13)

(b) (5) DPP, (b) (5) ACP, (b) (5) AWP

[redacted]

Cindy Anderson
EPA/OGC

(202) 564-2690

From: Kelly, Lynn
To: Anderson, Cindy
Subject: RE: draft cover letter to CEI w/release of text message invoice (12/6/13)
Date: Friday, December 06, 2013 12:56:00 PM
Attachments: draft CEI Release cover ltr 12 6 lek edits.docx (b) (5) DPP, (b) (5) ACP, (b) (5) AWP

(b) (5) DPP, (b) (5) ACP, (b) (5) AWP

[redacted] Let me know if you want to discuss!

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From: Anderson, Cindy
Sent: Friday, December 06, 2013 12:00 PM
To: Kelly, Lynn
Subject: draft cover letter to CEI w/release of text message invoice (12/6/13)

(b) (5) DPP, (b) (5) ACP, (b) (5) AWP

[redacted]

[redacted]

Cindy Anderson
EPA/OGC
(202) 564-2690

From: Kelly, Lynn
To: Anderson, Cindy
Subject: RE: drafting Answer to CEI Complaint - your example?
Date: Monday, August 12, 2013 4:10:00 PM
Attachments: CEI v EPA 13_434.pdf (b) (5) DPP, (b) (5) ACP, (b) (5) AWP [redacted]
FINAL CEI Answer.wpd
CourtLink_Document_US-DIS-DCD_1_13cv779_Idx_541927_5.29.2013_145918783.pdf
d_Answer.doc (b) (5) DPP, (b) (5) ACP, (b) (5) AWP [redacted]
ecf d_Answer.pdf

(b) (5) DPP, (b) (5) ACP, (b) (5) AWP [redacted]

[redacted]

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From: Anderson, Cindy
Sent: Monday, August 12, 2013 3:53 PM
To: Kelly, Lynn
Subject: drafting Answer to CEI Complaint - your example?

Lynn –

(b) (5) DPP, (b) (5) ACP, (b) (5) AWP [redacted]

[redacted] ?

Thanks!
Cindy

From: Anderson, Cindy
To: Miller, Kevin; Kelly, Lynn
Subject: RE: phone bill FOIA response and Q&As
Date: Thursday, July 25, 2013 2:25:22 PM

Kevin -

(b) (5) DPP, (b) (5) ACP, (b) (5) AWP
[redacted] ?

cindy

From: Miller, Kevin
Sent: Thursday, July 25, 2013 2:20 PM
To: Kelly, Lynn; Anderson, Cindy
Subject: RE: phone bill FOIA response and Q&As

(b) (5) DPP, (b) (5) ACP, (b) (5) AWP

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

From: Kelly, Lynn
Sent: Thursday, July 25, 2013 2:15 PM
To: Anderson, Cindy
Cc: Miller, Kevin
Subject: RE: phone bill FOIA response and Q&As

(b) (5) DPP, (b) (5) ACP, (b) (5) AWP

[redacted]

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

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From: Anderson, Cindy
Sent: Thursday, July 25, 2013 2:14 PM
To: Kelly, Lynn
Cc: Miller, Kevin
Subject: RE: phone bill FOIA response and Q&As
Importance: High

(b) (5) DPP, (b) (5) ACP, (b) (5) AWP

[redacted]

(b) (5) DPP, (b) (5) ACP, (b) (5) AWP [redacted]?

cindy

From: Kelly, Lynn
Sent: Thursday, July 25, 2013 2:12 PM
To: Anderson, Cindy
Cc: Miller, Kevin
Subject: FW: phone bill FOIA response and Q&As

Cindy,

(b) (5) DPP, (b) (5) ACP, (b) (5) AWP [redacted]

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

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From: Miller, Kevin
Sent: Thursday, July 25, 2013 2:06 PM
To: Kelly, Lynn
Subject: FW: phone bill FOIA response and Q&As

(b) (5) DPP, (b) (5) ACP, (b) (5) AWP ?

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

From: Ketcham-Colwill, Nancy
Sent: Thursday, July 25, 2013 1:53 PM
To: Minoli, Kevin; Goffman, Joseph; Reynolds, Thomas; Johnson, Alisha
Cc: Weinstock, Larry; Miller, Kevin
Subject: phone bill FOIA response and Q&As

(b) (5) DPP, (b) (5) ACP, (b) (5) AWP [redacted]

(b) (5) DPP, (b) (5) ACP, (b) (5) AWP

[redacted]. Thanks!

From: Kelly, Lynn
To: Lo, Michelle (USADC)
Subject: RE: quick update FW: CEI v. EPA, 13-0779 (BAH) -- text messages FOIA case
Date: Friday, August 02, 2013 3:49:00 PM

(b) (5) DPP, (b) (5) ACP, (b) (5) AWP [redacted]

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From: Lo, Michelle (USADC) [mailto:Michelle.Lo2@usdoj.gov]
Sent: Friday, August 02, 2013 3:47 PM
To: Kelly, Lynn
Subject: RE: quick update FW: CEI v. EPA, 13-0779 (BAH) -- text messages FOIA case

Lynn: (b) (5) DPP, (b) (5) ACP, (b) (5) AWP [redacted] Thanks.

From: Kelly, Lynn [mailto:Kelly.Lynn@epa.gov]
Sent: Friday, August 02, 2013 2:52 PM
To: Lo, Michelle (USADC)
Subject: RE: quick update FW: CEI v. EPA, 13-0779 (BAH) -- text messages FOIA case

Michelle,

(b) (5) DPP, (b) (5) ACP, (b) (5) AWP [redacted]

[redacted] Thanks.

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

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From: Lo, Michelle (USADC) [mailto:Michelle.Lo2@usdoj.gov]
Sent: Friday, August 02, 2013 12:10 PM
To: Kelly, Lynn
Subject: RE: quick update FW: CEI v. EPA, 13-0779 (BAH) -- text messages FOIA case

(b) (5) DPP, (b) (5) ACP, (b) (5) AWP [redacted]

From: Kelly, Lynn [mailto:Kelly.Lynn@epa.gov]
Sent: Friday, August 02, 2013 12:08 PM
To: Lo, Michelle (USADC)
Subject: FW: quick update FW: CEI v. EPA, 13-0779 (BAH) -- text messages FOIA case

(b) (5) DPP, (b) (5) ACP, (b) (5) AWP [redacted] Thanks.

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

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From: Minoli, Kevin
Sent: Friday, August 02, 2013 11:51 AM
To: Miller, Kevin
Cc: Kelly, Lynn
Subject: RE: quick update FW: CEI v. EPA, 13-0779 (BAH) -- text messages FOIA case

(b) (5) DPP, (b) (5) ACP, (b) (5) AWP [redacted] Thanks.

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: Friday, August 02, 2013 10:38 AM
To: Minoli, Kevin
Subject: quick update FW: CEI v. EPA, 13-0779 (BAH) -- text messages FOIA case

Kevin,

(b) (5) DPP, (b) (5) ACP, (b) (5) AWP [redacted]

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: Kelly, Lynn
Sent: Friday, August 02, 2013 10:34 AM
To: Ketcham-Colwill, Nancy
Cc: Miller, Kevin
Subject: FW: CEI v. EPA, 13-0779 (BAH)

Nancy,

(b) (5) DPP, (b) (5) ACP, (b) (5) AWP [redacted]

(b) (5) DPP, (b) (5) ACP, (b) (5) AWP [redacted]

[redacted]

Thanks,

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

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From: Lo, Michelle (USADC) [mailto:Michelle.Lo2@usdoj.gov]
Sent: Friday, August 02, 2013 9:36 AM
To: Kelly, Lynn
Subject: FW: CEI v. EPA, 13-0779 (BAH)

From: chornerlaw@aol.com [mailto:chornerlaw@aol.com]
Sent: Thursday, August 01, 2013 10:05 PM
To: Lo, Michelle (USADC); hbader@cei.org
Cc: skazman@cei.org
Subject: RE: CEI v. EPA, 13-0779 (BAH)

Dear Michelle,

Rather than endless rounds of clarification, though we have only sought one clear statement, I *think* you may just clarified the ambiguity as explained below. But if you plainly state what is implied we can dismiss.

Below you more strongly imply what seemed the implication before, but is still not stated outright with no room for misunderstanding. That is that Ms. McCarthy *only* used the texting function on her EPA phone for personal messages; and because she never used it for work this is why EPA has preserved none of her texts.

If that is what you were saying, would you please confirm that and that this is also EPA's position. In that case, you need not take any further questions to EPA and I accept the 'no records' response as sufficient such that we will dismiss.

I look forward to your reply.

Best,
Chris

Sent from my Verizon Wireless 4G LTE smartphone

"Lo, Michelle (USADC)" wrote:

Chris,

I will take your request back to the agency, but I would like to be clear in what I will be communicating to the agency. The Agency has already explained that Ms. McCarthy uses text messaging for family and other personal business, not government business and that, because personal text messages are unrelated to Agency business, they were not required to be preserved by the Agency. I am not sure how you read this statement to mean that Ms. McCarthy uses the texting function for EPA business. As I explained to Hans, this FOIA request deals with text messages on 18 specific dates, and we have already provided a very clear explanation for the "no records" response.

If what you are asking is – did Ms. McCarthy send ever any text messages that were work-related – I can ask the EPA if it would be willing to respond to this question even though it is well outside the scope of the FOIA request and does not alter the fact that the EPA did not locate any text messages on the 18 specific dates. If the EPA is willing to respond to the question of whether Ms. McCarthy ever sent any text messages that were work-related, can you represent that you will dismiss this case? As much as I think briefing would be an unnecessary use of the Court's and the parties' resources, it may be that we end up having to brief this matter rather than engage in endless rounds of clarification.

Best,
Michelle

From: Chris Horner [mailto:chornerlaw@aol.com]
Sent: Thursday, August 01, 2013 6:41 PM
To: HBader@cei.org; Lo, Michelle (USADC)
Cc: SKazman@cei.org
Subject: Re: CEI v. EPA, 13-0779 (BAH)

Dera Michelle,

Please consider the following, in addition to what Hans has written you.

EPA's obligation is to *demonstrate* 'no records'. So far they have stated it. Demonstration is found in the bills for her device.

We have obtained what EPA claims to be the relevant (texting) portions of those bills, showing extensive texting activity, so extensive that it is thoroughly implausible that Ms. McCarthy didn't text on those dates.

After we calculated the probability (1 in 7.9 sextillion), we received your statement on EPA's behalf including the portion that is the basis for the ambiguity that Hans refers to and under which we cannot dismiss, but possibly can if you clarify what it is saying:

> Ms. McCarthy uses text messaging to communicate with her family. Ms. McCarthy uses email for government business, and text messaging for family and other personal business. These personal text messages are unrelated to Agency business, and thus were not required to be preserved by the Agency.

To me this plainly implied that EPA's position is that Ms. McCarthy uses email for work and the text messaging function*only* for personal messages, and therefore EPA has not preserved her text messaging. If that is the case, and EPA state it, then the 'no records' response is sufficient and we can, I believe, dismiss.

However, another of us suggested that in context it implies something materially different, that while Ms. McCarthy uses the texting function for EPA business, on the 18 dates at issue in this matter all texts sent or received by Ms. McCarthy were personal, which is why those specific text messages are not preserved. We have not had our stats people run the probability of that but I suggest it is for all practical purposes the same as the idea that she did not text on those 18 dates.

Regardless, it may imply both but we cannot reasonably discern which, and so we ask you to state which is EPA's assertion. This is material because of EPA's obligation to demonstrate, and the sole (and most reasonable) demonstration -- her phone bills -- indicating that one of these readings is implausible, and under that reading therefore so is the 'no records' claim. The other reading is more plausible and makes the 'no records' response plausible.

So, we simply would like clarification of the ambiguous statement: over the period in question, did EPA preserve some of Ms. McCarthy's text messages -- those that someone determined were work-related -- or did they preserve none of them because they were all personal?

If we have a clear answer to this then depending on that clarification we can possibly dismiss, or we know we cannot justify doing so. We also cannot justify doing so in the absence of a clarification of an ambiguous assertion. Clarifying it is of course much simpler than further litigating this if that clarification would enable resolution and dismissal.

But as such, we need it to be a formal representation, in writing.

We look forward to your response.

Best,
Chris Horner

****
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: Hans Bader <HBader@cei.org>
To: Lo, Michelle (USADC) (USADC) <Michelle.Lo2@usdoj.gov>
Cc: Sam Kazman <SKazman@cei.org>; Chris Horner <chornerlaw@aol.com>
Sent: Thu, Aug 1, 2013 11:30 am
Subject: RE: CEI v. EPA, 13-0779 (BAH)

I should note that we have no objection to the proposed briefing schedule you suggested

(EPA's Motion for Summary Judgment September 16, 2013
CEI's Opposition to EPA's Motion for Summary Judgment October 16, 2013
EPA's Reply November 6, 2013).

But, hopefully, we can tie up the loose ends described below in my earlier email, and moot the need for any summary judgment motion (by resolving the case before then).

I will call you in a few minutes to try to get these things squared away.

Thanks,

Hans Bader
CEI

From: Hans Bader
Sent: Wednesday, July 31, 2013 8:25 PM
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Cc: Sam Kazman; Chris Horner
Subject: RE: CEI v. EPA, 13-0779 (BAH)

You are correct that I am only seeking the text messages for 18 specific dates, not the text messages in general. The reason I am asking about the text messages not being preserved in general over that period (July 9, 2009 to June 29, 2012) is just to confirm the apparent reason why the text messages don't exist for those 18 dates. Once this is understood, the query makes sense, to clarify matters and eliminate any ambiguities.

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Sent: Wednesday, July 31, 2013 6:19 PM
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Cc: Sam Kazman; Chris Horner
Subject: RE: CEI v. EPA, 13-0779 (BAH)

Dear Hans,

As I stated below and as reflected in the EPA's answer to the complaint, the Agency did not locate any text messages for the 18 dates specified by your FOIA request. As for your question about the preservation of Ms. McCarthy's text messages in general, we are now going well beyond the scope of this FOIA litigation, and I do not believe this is the appropriate forum to address this question.

Thanks,
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From: Hans Bader [mailto:HBader@cei.org]
Sent: Wednesday, July 31, 2013 4:08 PM
To: Lo, Michelle (USADC)
Cc: Sam Kazman; Chris Horner
Subject: RE: CEI v. EPA, 13-0779 (BAH)

Thanks for the clarifying details. Does this mean that her text messages in general weren't preserved, or just that the agency didn't locate any such messages for the 18 dates specified by the FOIA request? (Just tying up loose ends.)

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From: Lo, Michelle (USADC) [mailto:Michelle.Lo2@usdoj.gov]
Sent: Wednesday, July 31, 2013 3:42 PM
To: Hans Bader

Cc: Sam Kazman; Chris Horner
Subject: RE: CEI v. EPA, 13-0779 (BAH)

Dear Hans,

Thank you for the call just now. To summarize our discussion, I've inquired with the EPA about your question below, and EPA has explained that the Agency did not locate any text messages responsive to your FOIA request at issue in this case. Moreover and in any event, Ms. McCarthy uses text messaging to communicate with her family. Ms. McCarthy uses email for government business, and text messaging for family and other personal business. These personal text messages are unrelated to Agency business, and thus were not required to be preserved by the Agency.

It's my understanding that you will be filing a stipulation of dismissal in this case. I do have one edit, which is to add "with each party to bear its own costs and fees" to the end of the stipulation. I have also made a formatting change to the signature block since my telephone number is changing. If these changes are acceptable to you, you are authorized to file the stipulation on behalf of the parties.

Thanks,
Michelle

Michelle Lo
Assistant United States Attorney
Civil Division
555 4th Street, N.W.
Washington, D.C. 20530
(202) 252-2541 – ***Please note new number***
(202) 514-8780 fax
Michelle.Lo2@usdoj.gov

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One final thing: My colleagues are curious and want an answer to the following question before we dismiss the case: How can there be no responsive records (as stated by EPA in its no-records response, and echoed in the answer), that is, no text messages, when EPA has elsewhere produced documents to us saying that Ms. McCarthy sent hundreds of text messages using her EPA device (see the attached administrative response by EPA to Chris Horner's FOIA request – the first attached file is EPA's cover letter in response to that request, and the second is its substantive response)? I'd like to get that clarification on that issue before filing the stipulation I sent earlier.

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Accordingly, plaintiff would be willing to file the attached stipulation of dismissal. If this is acceptable to you, then it can be filed with the court, and it will not be necessary to set a briefing schedule.

Sorry for the delay in responding.

Thank you.

Hans Bader
Competitive Enterprise Institute
(202) 331-2278
hbader@cei.org

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Subject: RE: CEI v. EPA, 13-0779 (BAH)

Dear Hans:

Per Judge Howell's Standing Order, the parties are to jointly prepare and submit a report indicating whether the agency has made a final determination on compliance with the FOIA request at issue and propose a schedule for the filing of dispositive motions within 14 days after any defendant appears, or by this Friday, August 2. As you know, the EPA issued a "no records" response to CEI's FOIA request on May 31, 2013. Provided CEI intends to proceed with this litigation, we propose the following briefing schedule:

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Please let me know if the above proposal is agreeable to you. Thank you.

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(202) 252-2541 – ***Please note new number***
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Michelle.Lo2@usdoj.gov

From: Hans Bader [mailto:HBader@cei.org]
Sent: Wednesday, July 17, 2013 6:06 PM
To: Lo, Michelle (USADC)

Subject: RE: CEI v. EPA, 13-0779 (BAH)

I am still waiting to hear back. Sorry about the delay.

From: Lo, Michelle (USADC) [mailto:Michelle.Lo2@usdoj.gov]
Sent: Wednesday, July 17, 2013 6:00 PM
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Have you had a chance to discuss with your colleagues whether CEI intends to move forward with this litigation in light of the EPA's no records response?

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Michelle

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Subject: CEI v. EPA, 13-0779 (BAH)

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Attached is the EPA's response to CEI's FOIA request for "copies of all text messages sent by Assistant Administrator for Air and Radiation Gina McCarthy on a mobile telephone provided for her use by the Agency" that I was referring to on our call just now. Please let me know if CEI believes that further litigation of this case will be necessary in light of the EPA's no records response. Thank you.

<< File: Final Response 6005.pdf >>

Michelle Lo
Assistant United States Attorney
Civil Division
555 4th Street, N.W.
Washington, D.C. 20530
(202) 514-5134; (202) 514-8780 fax
Michelle.Lo2@usdoj.gov

From: Kelly, Lynn
To: Lo, Michelle (USADC)
Subject: RE: quick update FW: CEI v. EPA, 13-0779 (BAH) -- text messages FOIA case
Date: Friday, August 02, 2013 2:08:00 PM

(b) (5) DPP, (b) (5) ACP, (b) (5) AWP [redacted]

[redacted] Let me know what you think. Thanks!

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

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Sent: Friday, August 02, 2013 12:08 PM
To: 'Lo, Michelle (USADC)'
Subject: FW: quick update FW: CEI v. EPA, 13-0779 (BAH) -- text messages FOIA case

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From: Minoli, Kevin
Sent: Friday, August 02, 2013 11:51 AM
To: Miller, Kevin
Cc: Kelly, Lynn
Subject: RE: quick update FW: CEI v. EPA, 13-0779 (BAH) -- text messages FOIA case

(b) (5) DPP, (b) (5) ACP, (b) (5) AWP [redacted]. Thanks.

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: Friday, August 02, 2013 10:38 AM
To: Minoli, Kevin
Subject: quick update FW: CEI v. EPA, 13-0779 (BAH) -- text messages FOIA case

Kevin,

(b) (5) DPP, (b) (5) ACP, (b) (5) AWP

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: Kelly, Lynn
Sent: Friday, August 02, 2013 10:34 AM
To: Ketcham-Colwill, Nancy
Cc: Miller, Kevin
Subject: FW: CEI v. EPA, 13-0779 (BAH)

Nancy,

(b) (5) DPP, (b) (5) ACP, (b) (5) AWP

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[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

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From: Lo, Michelle (USADC) [mailto:Michelle.Lo2@usdoj.gov]
Sent: Friday, August 02, 2013 9:36 AM
To: Kelly, Lynn
Subject: FW: CEI v. EPA, 13-0779 (BAH)

From: chornerlaw@aol.com [mailto:chornerlaw@aol.com]
Sent: Thursday, August 01, 2013 10:05 PM
To: Lo, Michelle (USADC); hbader@cei.org
Cc: skazman@cei.org
Subject: RE: CEI v. EPA, 13-0779 (BAH)

Dear Michelle,

Rather than endless rounds of clarification, though we have only sought one clear statement, I *think* you may just clarified the ambiguity as explained below. But if you plainly state what is implied we can dismiss.

Below you more strongly imply what seemed the implication before, but is still not stated outright with no room for misunderstanding. That is that Ms. McCarthy *only* used the texting function on her EPA phone for personal messages; and because she never used it for work this is why EPA has preserved none of her texts.

If that is what you were saying, would you please confirm that and that this is also EPA's position. In that case, you need not take any further questions to EPA and I accept the 'no records' response as sufficient such that we will dismiss.

I look forward to your reply.

Best,
Chris

Sent from my Verizon Wireless 4G LTE smartphone

"Lo, Michelle (USADC)" wrote:

Chris,

I will take your request back to the agency, but I would like to be clear in what I will be communicating to the agency. The Agency has already explained that Ms. McCarthy uses text messaging for family and other personal business, not government business and that, because personal text messages are unrelated to Agency business, they were not required to be preserved by the Agency. I am not sure how you read this statement to mean that Ms. McCarthy uses the texting function for EPA business. As I explained to Hans, this FOIA request deals with text messages on 18 specific dates, and we have already provided a very clear explanation for the "no records" response.

If what you are asking is – did Ms. McCarthy send ever any text messages that were work-related – I can ask the EPA if it would be willing to respond to this question even though it is well outside the scope of the FOIA request and does not alter the fact that the EPA did not locate any text messages on the 18 specific dates. If the EPA is willing to respond to the question of whether Ms. McCarthy ever sent any text messages that were work-related, can you represent that you will dismiss this case? As much as I think briefing would be an unnecessary use of the Court's and the parties' resources, it may be that we end up having to brief this matter rather than engage in endless rounds of clarification.

Best,
Michelle

From: Chris Horner [mailto:chornerlaw@aol.com]
Sent: Thursday, August 01, 2013 6:41 PM
To: HBader@cei.org; Lo, Michelle (USADC)
Cc: SKazman@cei.org
Subject: Re: CEI v. EPA, 13-0779 (BAH)

Dera Michelle,

Please consider the following, in addition to what Hans has written you.

EPA's obligation is to *demonstrate* 'no records'. So far they have stated it. Demonstration is found in the bills for her device.

We have obtained what EPA claims to be the relevant (texting) portions of those bills, showing extensive texting activity, so extensive that it is thoroughly implausible that Ms. McCarthy didn't text on those dates.

After we calculated the probability (1 in 7.9 sextillion), we received your statement on EPA's behalf including the portion that is the basis for the ambiguity that Hans refers to and under which we cannot dismiss, but possibly can if you clarify what it is saying:

> Ms. McCarthy uses text messaging to communicate with her family. Ms. McCarthy uses email for government business, and text messaging for family and other personal business. These personal text messages are unrelated to Agency business, and thus were not required to be preserved by the Agency.

To me this plainly implied that EPA's position is that Ms. McCarthy uses email for work and the text messaging function*only* for personal messages, and therefore EPA has not preserved her text messaging. If that is the case, and EPA state it, then the 'no records' response is sufficient and we can, I believe, dismiss.

However, another of us suggested that in context it implies something materially different, that while Ms. McCarthy uses the texting function for EPA business, on the 18 dates at issue in this matter all texts sent or received by Ms. McCarthy were personal, which is why those specific text messages are not preserved. We have not had our stats people run the probability of that but I suggest it is for all practical purposes the same as the idea that she did not text on those 18 dates.

Regardless, it may imply both but we cannot reasonably discern which, and so we ask you to state which is EPA's assertion. This is material because of EPA's obligation to demonstrate, and the sole (and most reasonable) demonstration -- her phone bills -- indicating that one of these readings is implausible, and under that reading therefore so is the 'no records' claim. The other reading is more plausible and makes the 'no records' response plausible.

So, we simply would like clarification of the ambiguous statement: over the period in question, did EPA preserve some of Ms. McCarthy's text messages -- those that someone determined were work-related -- or did they preserve none of them because they were all personal?

If we have a clear answer to this then depending on that clarification we can possibly dismiss, or we know we cannot justify doing so. We also cannot justify doing so in the absence of a clarification of an ambiguous assertion. Clarifying it is of course much simpler than further litigating this if that clarification would enable resolution and dismissal.

But as such, we need it to be a formal representation, in writing.

We look forward to your response.

Best,
Chris Horner

****
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.

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To: Lo, Michelle (USADC) (USADC) <Michelle.Lo2@usdoj.gov>
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Sorry for the delay in responding.

Thank you.

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Competitive Enterprise Institute
(202) 331-2278
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From: Kelly, Lynn
To: Minoli, Kevin; Miller, Kevin
Subject: RE: quick update FW: CEI v. EPA, 13-0779 (BAH) -- text messages FOIA case
Date: Friday, August 02, 2013 12:02:00 PM

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

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

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Kevin

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

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[redacted]

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Dear Michelle,

Rather than endless rounds of clarification, though we have only sought one clear statement, I *think* you may just clarified the ambiguity as explained below. But if you plainly state what is implied we can dismiss.

Below you more strongly imply what seemed the implication before, but is still not stated outright with no room for misunderstanding. That is that Ms. McCarthy *only* used the texting function on her EPA phone for personal messages; and because she never used it for work this is why EPA has preserved none of her texts.

If that is what you were saying, would you please confirm that and that this is also EPA's position. In that case, you need not take any further questions to EPA and I accept the 'no records' response as sufficient such that we will dismiss.

I look forward to your reply.

Best,
Chris

Sent from my Verizon Wireless 4G LTE smartphone

"Lo, Michelle (USADC)" wrote:

Chris,

I will take your request back to the agency, but I would like to be clear in what I will be communicating to the agency. The Agency has already explained that Ms. McCarthy uses text messaging for family and other personal business, not government business and that, because personal text messages are unrelated to Agency business, they were not required to be preserved by the Agency. I am not sure how you read this statement to mean that Ms. McCarthy uses the texting function for EPA business. As I explained to Hans, this FOIA request deals with text messages on 18 specific dates, and we have already provided a very clear explanation for the "no records" response.

If what you are asking is – did Ms. McCarthy send ever any text messages that were work-related – I can ask the EPA if it would be willing to respond to this question even though it is well outside the scope of the FOIA request and does not alter the fact that the EPA did not locate any text messages on the 18 specific dates. If the EPA is willing to respond to the question of whether Ms. McCarthy ever sent any text messages that were work-related, can you represent that you will dismiss this case? As much as I think briefing would be an unnecessary use of the Court's and the parties' resources, it may be that we end up having to brief this matter rather than engage in endless rounds of clarification.

Best,
Michelle

From: Chris Horner [mailto:chornerlaw@aol.com]
Sent: Thursday, August 01, 2013 6:41 PM
To: HBader@cei.org; Lo, Michelle (USADC)
Cc: SKazman@cei.org
Subject: Re: CEI v. EPA, 13-0779 (BAH)

Dera Michelle,

Please consider the following, in addition to what Hans has written you.

EPA's obligation is to *demonstrate* 'no records'. So far they have stated it. Demonstration is found in the bills for her device.

We have obtained what EPA claims to be the relevant (texting) portions of those bills, showing extensive texting activity, so extensive that it is thoroughly implausible that Ms. McCarthy didn't text on those dates.

After we calculated the probability (1 in 7.9 sextillion), we received your statement on EPA's behalf including the portion that is the basis for the ambiguity that Hans refers to and under which we cannot dismiss, but possibly can if you clarify what it is saying:

> Ms. McCarthy uses text messaging to communicate with her family. Ms. McCarthy uses email for government business, and text messaging for family and other personal business. These personal text messages are unrelated to Agency business, and thus were not required to be preserved by the Agency.

To me this plainly implied that EPA's position is that Ms. McCarthy uses email for work and the text messaging function*only* for personal messages, and therefore EPA has not preserved her text messaging. If that is the case,

and EPA state it, then the 'no records' response is sufficient and we can, I believe, dismiss.

However, another of us suggested that in context it implies something materially different, that while Ms. McCarthy uses the texting function for EPA business, on the 18 dates at issue in this matter all texts sent or received by Ms. McCarthy were personal, which is why those specific text messages are not preserved. We have not had our stats people run the probability of that but I suggest it is for all practical purposes the same as the idea that she did not text on those 18 dates.

Regardless, it may imply both but we cannot reasonably discern which, and so we ask you to state which is EPA's assertion. This is material because of EPA's obligation to demonstrate, and the sole (and most reasonable) demonstration -- her phone bills -- indicating that one of these readings is implausible, and under that reading therefore so is the 'no records' claim. The other reading is more plausible and makes the 'no records' response plausible.

So, we simply would like clarification of the ambiguous statement: over the period in question, did EPA preserve some of Ms. McCarthy's text messages -- those that someone determined were work-related -- or did they preserve none of them because they were all personal?

If we have a clear answer to this then depending on that clarification we can possibly dismiss, or we know we cannot justify doing so. We also cannot justify doing so in the absence of a clarification of an ambiguous assertion. Clarifying it is of course much simpler than further litigating this if that clarification would enable resolution and dismissal.

But as such, we need it to be a formal representation, in writing.

We look forward to your response.

Best,
Chris Horner

****
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: Hans Bader <HBader@cei.org>
To: Lo, Michelle (USADC) (USADC) <Michelle.Lo2@usdoj.gov>
Cc: Sam Kazman <SKazman@cei.org>; Chris Horner <chornerlaw@aol.com>
Sent: Thu, Aug 1, 2013 11:30 am
Subject: RE: CEI v. EPA, 13-0779 (BAH)

I should note that we have no objection to the proposed briefing schedule you suggested

(EPA's Motion for Summary Judgment September 16, 2013
CEI's Opposition to EPA's Motion for Summary Judgment October 16, 2013
EPA's Reply November 6, 2013).

But, hopefully, we can tie up the loose ends described below in my earlier email, and moot the need for any summary judgment motion (by resolving the case before then).

I will call you in a few minutes to try to get these things squared away.

Thanks,

Hans Bader
CEI

From: Hans Bader
Sent: Wednesday, July 31, 2013 8:25 PM
To: 'Lo, Michelle (USADC)'
Cc: Sam Kazman; Chris Horner
Subject: RE: CEI v. EPA, 13-0779 (BAH)

You are correct that I am only seeking the text messages for 18 specific dates, not the text messages in general. The reason I am asking about the text messages not being preserved in general over that period (July 9, 2009 to June 29, 2012) is just to confirm the apparent reason why the text messages don't exist for those 18 dates. Once this is understood, the query makes sense, to clarify matters and eliminate any ambiguities.

Thanks,

Hans

From: Lo, Michelle (USADC) [mailto:Michelle.Lo2@usdoj.gov]
Sent: Wednesday, July 31, 2013 6:19 PM
To: Hans Bader
Cc: Sam Kazman; Chris Horner
Subject: RE: CEI v. EPA, 13-0779 (BAH)

Dear Hans,

As I stated below and as reflected in the EPA's answer to the complaint, the Agency did not locate any text messages for the 18 dates specified by your FOIA request. As for your question about the preservation of Ms. McCarthy's text messages in general, we are now going well beyond the scope of this FOIA litigation, and I do not believe this is the appropriate forum to address this question.

Thanks,
Michelle

From: Hans Bader [mailto:HBader@cei.org]
Sent: Wednesday, July 31, 2013 4:08 PM
To: Lo, Michelle (USADC)
Cc: Sam Kazman; Chris Horner
Subject: RE: CEI v. EPA, 13-0779 (BAH)

Thanks for the clarifying details. Does this mean that her text messages in general weren't preserved, or just that the agency didn't locate any such messages for the 18 dates specified by the FOIA request? (Just tying up loose ends.)

Thanks,

Hans

From: Lo, Michelle (USADC) [mailto:Michelle.Lo2@usdoj.gov]
Sent: Wednesday, July 31, 2013 3:42 PM
To: Hans Bader
Cc: Sam Kazman; Chris Horner
Subject: RE: CEI v. EPA, 13-0779 (BAH)

Dear Hans,

Thank you for the call just now. To summarize our discussion, I've inquired with the EPA about your question below, and EPA has explained that the Agency did not locate any text messages responsive to your FOIA request at issue in this case. Moreover and in any event, Ms. McCarthy uses text messaging to communicate with her family. Ms. McCarthy uses email for government business, and text messaging for family and other personal business. These personal text messages are unrelated to Agency business, and thus were not required to be preserved by the Agency.

It's my understanding that you will be filing a stipulation of dismissal in this case. I do have one edit, which is to add "with each party to bear its own costs and fees" to the end of the stipulation. I have also made a formatting change to the signature block since my telephone number is changing. If these changes are acceptable to you, you are authorized to file the stipulation on behalf of the parties.

Thanks,
Michelle

Michelle Lo
Assistant United States Attorney
Civil Division
555 4th Street, N.W.
Washington, D.C. 20530
(202) 252-2541 – ***Please note new number***
(202) 514-8780 fax
Michelle.Lo2@usdoj.gov

From: Hans Bader [mailto:HBader@cei.org]
Sent: Monday, July 29, 2013 3:02 PM
To: Lo, Michelle (USADC)
Cc: Sam Kazman; Chris Horner
Subject: RE: CEI v. EPA, 13-0779 (BAH)

One final thing: My colleagues are curious and want an answer to the following question before we dismiss the case: How can there be no responsive records (as stated by EPA in its no-records response, and echoed in the answer), that is, no text messages, when EPA has elsewhere produced documents to us saying that Ms. McCarthy sent hundreds of text messages using her EPA device (see the attached administrative response by EPA to Chris Horner's FOIA request – the first attached file is EPA's cover letter in response to that request, and the second is its substantive response)? I'd like to get that clarification on that issue before filing the stipulation I sent earlier.

Thanks,

Hans Bader
CEI

From: Hans Bader
Sent: Monday, July 29, 2013 12:17 PM
To: 'Lo, Michelle (USADC)'
Cc: Sam Kazman
Subject: RE: CEI v. EPA, 13-0779 (BAH)

Oops. The draft stipulation I sent in the below email had the wrong docket number on it. That has been fixed in the attached draft stipulation.

From: Hans Bader

Sent: Monday, July 29, 2013 12:11 PM
To: 'Lo, Michelle (USADC)'
Cc: Sam Kazman
Subject: RE: CEI v. EPA, 13-0779 (BAH)

Chris Horner remains very skeptical of the no-records response. Nevertheless, it seems to me that it may not be worth the candle to keep litigating this particular case, as a prudential matter.

Accordingly, plaintiff would be willing to file the attached stipulation of dismissal. If this is acceptable to you, then it can be filed with the court, and it will not be necessary to set a briefing schedule.

Sorry for the delay in responding.

Thank you.

Hans Bader
Competitive Enterprise Institute
(202) 331-2278
hbader@cei.org

From: Lo, Michelle (USADC) [mailto:Michelle.Lo2@usdoj.gov]
Sent: Monday, July 29, 2013 10:11 AM
To: Hans Bader
Subject: RE: CEI v. EPA, 13-0779 (BAH)

Dear Hans:

Per Judge Howell's Standing Order, the parties are to jointly prepare and submit a report indicating whether the agency has made a final determination on compliance with the FOIA request at issue and propose a schedule for the filing of dispositive motions within 14 days after any defendant appears, or by this Friday, August 2. As you know, the EPA issued a "no records" response to CEI's FOIA request on May 31, 2013. Provided CEI intends to proceed with this litigation, we propose the following briefing schedule:

EPA's Motion for Summary Judgment	September 16, 2013
CEI's Opposition to EPA's Motion for Summary Judgment	October 16, 2013
EPA's Reply	November 6, 2013

Please let me know if the above proposal is agreeable to you. Thank you.

Michelle Lo
Assistant United States Attorney
Civil Division
555 4th Street, N.W.
Washington, D.C. 20530
(202) 252-2541 – ***Please note new number***
(202) 514-8780 fax
Michelle.Lo2@usdoj.gov

From: Hans Bader [mailto:HBader@cei.org]
Sent: Wednesday, July 17, 2013 6:06 PM
To: Lo, Michelle (USADC)
Subject: RE: CEI v. EPA, 13-0779 (BAH)

I am still waiting to hear back. Sorry about the delay.

From: Lo, Michelle (USADC) [mailto:Michelle.Lo2@usdoj.gov]
Sent: Wednesday, July 17, 2013 6:00 PM
To: Hans Bader
Subject: RE: CEI v. EPA, 13-0779 (BAH)

Hans:

Have you had a chance to discuss with your colleagues whether CEI intends to move forward with this litigation in light of the EPA's no records response?

Thanks,
Michelle

From: Lo, Michelle (USADC)
Sent: Thursday, July 11, 2013 4:12 PM
To: Hans Bader <HBader@cei.org> (HBader@cei.org)
Subject: CEI v. EPA, 13-0779 (BAH)

Hans:

Attached is the EPA's response to CEI's FOIA request for "copies of all text messages sent by Assistant Administrator for Air and Radiation Gina McCarthy on a mobile telephone provided for her use by the Agency" that I was referring to on our call just now. Please let me know if CEI believes that further litigation of this case will be necessary in light of the EPA's no records response. Thank you.

<< File: Final Response 6005.pdf >>

Michelle Lo
Assistant United States Attorney
Civil Division
555 4th Street, N.W.
Washington, D.C. 20530
(202) 514-5134; (202) 514-8780 fax
Michelle.Lo2@usdoj.gov

From: Kelly, Lynn
To: Anderson, Cindy
Cc: Miller, Kevin
Subject: RE: up/down-loading text messages
Date: Friday, January 17, 2014 12:39:00 PM

(b) (5) DPP, (b) (5) ACP, (b) (5) AWP [redacted]

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
Sent: Friday, January 17, 2014 12:23 PM
To: Kelly, Lynn
Cc: Miller, Kevin
Subject: up/down-loading text messages

Lynn -

(b) (5) DPP, (b) (5) ACP, (b) (5) AWP [redacted]

[redacted]

[redacted]

Cindy Anderson
EPA/OGC
(202) 564-2690

From: Kelly, Lynn
To: Anderson, Cindy
Subject: RE: updated cases (w/due dates) for Bi-Weekly w/FO (11.6.13)
Date: Tuesday, November 05, 2013 11:40:00 AM

Thanks, sorry I forgot I had these already!

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
Sent: Tuesday, November 05, 2013 11:16 AM
To: Kelly, Lynn
Subject: FW: updated cases (w/due dates) for Bi-Weekly w/FO (11.6.13)

Cindy
564-2690

From: Anderson, Cindy
Sent: Monday, November 04, 2013 10:25 AM
To: Kelly, Lynn
Subject: updated cases (w/due dates) for Bi-Weekly w/FO (11.6.13)

Lynn –

(b) (5) DPP, (b) (5) ACP, (b) (5) AWP [redacted]

12/3/13 MSJ, CEI v. EPA, FOIA for bills for Gina McCarthy text messages for 3yr period (June 2009-2013)

Cindy Anderson
EPA/OGC

(202) 564-2690

From: Kelly, Lynn
To: Anderson, Cindy
Subject: RE: updated cases (w/due dates) for Bi-Weekly w/FO (11.6.13)
Date: Monday, November 04, 2013 10:26:00 AM

Thank you! (Also were you the cookie fairy? If so thank you!)

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: Anderson, Cindy
Sent: Monday, November 04, 2013 10:22 AM
To: Kelly, Lynn
Subject: updated cases (w/due dates) for Bi-Weekly w/FO (11.6.13)

Lynn –

(b) (5) DPP, (b) (5) ACP, (b) (5) AWP [redacted]

[redacted]

[redacted]

12/3/13 MSJ, CEI v. EPA, FOIA for bills for Gina McCarthy text messages for 3yr period (June 2009-2013)

Cindy Anderson
EPA/OGC
(202) 564-2690

From: Anderson, Cindy
To: Kelly, Lynn
Subject: draft cover letter to CEI w/release of text message invoice (12/6/13)
Date: Friday, December 06, 2013 12:00:13 PM
Attachments: draft CEI Release cover ltr 12.6.docx (b) (5) DPP, (b) (5) ACP, (b) (5) AWP

(b) (5) DPP, (b) (5) ACP, (b) (5) AWP

[redacted]

[redacted]

Cindy Anderson
EPA/OGC
(202) 564-2690

From: Miller, Kevin
To: Kelly, Lynn
Subject: lit. dates for biweekly
Date: Tuesday, October 22, 2013 2:01:21 PM

Lynn,

Can you ask everyone to please make a careful update to the due dates for the biweekly. I know
(b) (5) DPP, (b) (5) ACP, (b) (5) AWP [redacted]

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

From: Anderson, Cindy
To: Kelly, Lynn
Subject: updated cases (w/due dates) for Bi-Weekly w/FO (11.6.13)
Date: Monday, November 04, 2013 10:21:34 AM

Lynn –

(b) (5) DPP, (b) (5) ACP, (b) (5) AWP [redacted]

[redacted]

[redacted]

12/3/13 MSJ, CEI v. EPA, FOIA for bills for Gina McCarthy text messages for 3yr period (June 2009-2013)

Cindy Anderson
EPA/OGC
(202) 564-2690

From: Miller, Kevin
To: OGC GLO
Subject: Bi weekly agenda
Date: Tuesday, September 24, 2013 5:46:13 PM
Attachments: GLO reg review template (3) (3) (3) (4).docx (b) (5) DPP, (b) (5) ACP, (b) (5) AWP

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

From: Anderson, Cindy
To: Hammitt, Jennifer
Subject: (b) (5) DPP, (b) (5) ACP, (b) (5) AWP
Date: Wednesday, December 04, 2013 12:06:37 PM

Jennifer –

(b) (5) DPP, (b) (5) ACP, (b) (5) AWP

Thanks!

Cindy
564-2690

From: Anderson, Cindy
Sent: Tuesday, November 26, 2013 4:53 PM
To: 'Nebeker, Mark (USADC)'
Subject: FW: CEI v. EPA (13-1074)

Mark –

(b) (5) DPP, (b) (5) ACP, (b) (5) AWP

Cindy
564-2690

From: Anderson, Cindy

Sent: Tuesday, November 26, 2013 10:23 AM
To: Nguyen, Quoc; Nebeker, Mark (USADC)
Subject: FW: CEI v. EPA (13-1074)

Mark -

(b) (5) DPP, (b) (5) ACP, (b) (5

Cindy Anderson
EPA/OGC
(202) 564-2690

From: Chris Horner <CHorner@cei.org>
Sent: Tuesday, November 26, 2013 10:17 AM
To: Nebeker, Mark (USADC)
Cc: Anderson, Cindy; Hans Bader; Sam Kazman
Subject: Re: CEI v. EPA (13-1074)

Ok Mark, take that time, and we would like the same but not counting the holiday period. So, you take the 11 days and we will take that, plus the week 'off', or 18 days. Does that work for you? (Btw Cindy, I never was provided the November production in that ATI case despite EPA claiming otherwise, and as I gave informed them twice; it also still was not at FOIAOnline as of yesterday, FYI. Since it us mentioned here).
Best,
Chris Horner

Sent from my iPhone

On Nov 25, 2013, at 4:55 PM, "Nebeker, Mark (USADC)" <Mark.Nebeker@usdoj.gov> wrote:

<image001.png>
I am forced to ask for an additional extension of time to get the summary judgment motion filed in the above civil action. As, I believe, you know from our earlier discussions, the agency has located certain records that it intends to release (with redactions) in the case. Due to many competing issues that have arisen (before and after the government shutdown) the agency does not believe it can get to you the redacted production in advance of December 6, 2013. I also must participate in depositions in an unrelated civil action that was assigned to me late in the discovery process. That case also required that my client supplement the discovery responses this week. My agency counsel has also been required to assist in a production in another case that I believe you are handling (ATI v. EPA) which involves a document production next on December 15, 2013. I must also complete a motion and opposition in the Court of Appeals next week and be responsible for emergency matters should any motions for a temporary restraining orders be filed next week. In short, we are trying to respond properly in your case, but have many competing responsibilities.

May I have your consent to an extension of time to file our dispositive motion in this case on December 17, 2013 (a 2-week extension)? I am certainly willing to provide you whatever time you reasonably need to respond to the motion.

From: Christopher Horner [mailto:chris.horner@cei.org]
Sent: Tuesday, November 12, 2013 4:50 PM
To: Nebeker, Mark (USADC)
Cc: Hans Bader; Sam Kazman; Anderson, Cindy
Subject: Re: CEI v. EPA (13-1074)

We can consider CEI's FOIA request HQ-2013-005618 for records regarding Gina McCarthy IT training resolved.

Best,
Chris Horner

On 11/12/13 4:32 PM, "Nebeker, Mark (USADC)" <Mark.Nebeker@usdoj.gov> wrote:

<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: Miller, Kevin
To: OGC GLO
Subject: FW: GLO bi weekly agenda -- 11/20/13
Date: Tuesday, November 19, 2013 3:34:56 PM
Attachments: GLO reg review 11-20-13 ILPG.docx (b) (5) DPP, (b) (5) ACP, (b) (5) AWP

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

From: Hammitt, Jennifer
To: Kelly, Lynn
Subject: FW: Misdirected Request HQ-2013-006005
Date: Wednesday, May 29, 2013 3:19:00 PM
Attachments: HQ-2013-006005 Request Letter.pdf

(b) (5) DPP, (b) (5) ACP, (b) (5) AWP

Jennifer Hammitt
U.S. Environmental Protection Agency
Office of General Counsel, General Law Office
1200 Pennsylvania Ave, N.W. , MC 2377A
Washington, D.C. 20460
(202) 564-5097

From: McDermott, Marna
Sent: Thursday, May 23, 2013 12:08 PM
To: Miller, Kevin
Cc: Hammitt, Jennifer
Subject: FW: Misdirected Request HQ-2013-006005

(b) (5) DPP, (b) (5) ACP, (b) (5) AWP . Thanks.

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

From: Weinstock, Larry
Sent: Thursday, May 23, 2013 9:32 AM
To: McDermott, Marna
Subject: FW: Misdirected Request HQ-2013-006005

Thanks for your help.

Larry

From: Hamilton, Sabrina
Sent: Tuesday, May 21, 2013 2:22 PM
To: Weinstock, Larry
Cc: Ketcham-Colwill, Nancy; Hammond, Gloria; Faulkner, Martha
Subject: FW: Misdirected Request HQ-2013-006005

Larry,

This is being assigned to you in FOIAonline for coordination with Larry Dollison. Let me know if I should task the assignment to another office or if OEI should be the lead. Thanks

Sabrina

From: Newton, Jonathan
Sent: Tuesday, May 21, 2013 9:33 AM
To: Hamilton, Sabrina
Cc: Simms, Shavonne
Subject: Misdirected Request HQ-2013-006005

Hi Sabrina,

Sorry for the delay; this request (seeking Gina McCarthy's text messages) should go to either OAR or OEI. (b)(5) DPP [redacted]

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: Miller, Kevin
To: OGC FRONT OFFICE
Cc: OGC GLO
Subject: GLO 1/15/14 Reg Review Agenda -- 11 a.m. Rm. 4045
Date: Wednesday, January 15, 2014 8:48:32 AM
Attachments: GLO reg review 1-15-13 ILPG (2) (4).DOCX (b) (5) DPP, (b) (5) ACP, (b) (5) AWP

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

From:	Guerrero, David
To:	Mallory, Brenda; Minoli, Kevin; Garbow, Avi
Cc:	McDermott, Marna; Jones, Gail-R; OGC GLO; Veney, Carla; Patrick, Monique; Smith, Kristi
Subject:	GLO Biweekly Meeting Agenda
Date:	Tuesday, August 27, 2013 12:31:44 PM
Attachments:	GLO reg review 8-28-13.docx (b) (5) DPP, (b) (5) ACP, (b) (5) AWP

Attached is the agenda for tomorrow's biweekly meeting with the OGC Front Office.

David P. Guerrero
Assistant General Counsel
US Environmental Protection Agency
Office of General Counsel
General Law Office
Employment Law Practice Group
(202) 564-5458
(202) 564-5432 (FAX)

From: Hammitt, Jennifer
To: Kelly, Lynn
Cc: Miller, Kevin
Date: Thursday, May 30, 2013 1:49:00 PM
Attachments: FW Misdirected Request HQ-2013-006005.msg
FW Misdirected Request HQ-2013-006005.msg
RE Misdirected Request HQ-2013-006005.msg
RE Misdirected Request HQ-2013-006005.msg
RE Misdirected Request HQ-2013-006005.msg
RE Misdirected Request HQ-2013-006005.msg
RE two questions.msg
two questions.msg
RE two questions.msg
RE two questions.msg

(b) (5) DPP, (b) (5) ACP, (b) (5) AWP
[redacted]

Hi Lynn – (b) (5) DPP, (b) (5) ACP, (b) (5) AWP [redacted] – thanks!

From: Nguyen, Quoc
To: OGC GLO ILPG
Subject: Please send me your agenda items for GLO Reg Review
Date: Wednesday, December 04, 2013 10:16:59 AM
Attachments: GLO reg review 11-20-13 ILPG.DOCX (b) (5) DPP, (b) (5) ACP, (b) (5) AWP

Hi All,

Please send me your agenda items and case updates.

As mentioned in our weekly meeting, please send me your vacation schedules and complete the trainings for Tribal Nations, EZ Mail, and Ethics before the end of the year.

Thanks,
Quoc

Quoc P. Nguyen
Office of General Counsel
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20010
202-564-6343

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From: Hammitt, Jennifer
To: Miller, Kevin; Kelly, Lynn
Subject: RE: Misdirected Request HQ-2013-006005
Date: Thursday, May 23, 2013 12:21:00 PM

I replied to Marna, FYI.

Jennifer Hammitt
U.S. Environmental Protection Agency
Office of General Counsel, General Law Office
1200 Pennsylvania Ave, N.W. , MC 2377A
Washington, D.C. 20460
(202) 564-5097

From: Miller, Kevin
Sent: Thursday, May 23, 2013 12:12 PM
To: Kelly, Lynn; Hammitt, Jennifer
Subject: FW: Misdirected Request HQ-2013-006005

(b) (5) DPP, (b) (5) ACP, (b) (5) AWP [redacted].

From: McDermott, Marna
Sent: Thursday, May 23, 2013 12:08 PM
To: Miller, Kevin
Cc: Hammitt, Jennifer
Subject: FW: Misdirected Request HQ-2013-006005

(b) (5) DPP, (b) (5) ACP, (b) (5) AWP [redacted] Thanks.

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

From: Weinstock, Larry
Sent: Thursday, May 23, 2013 9:32 AM
To: McDermott, Marna
Subject: FW: Misdirected Request HQ-2013-006005

Thanks for your help.

Larry

From: Hamilton, Sabrina
Sent: Tuesday, May 21, 2013 2:22 PM
To: Weinstock, Larry
Cc: Ketcham-Colwill, Nancy; Hammond, Gloria; Faulkner, Martha
Subject: FW: Misdirected Request HQ-2013-006005

Larry,

This is being assigned to you in FOIAonline for coordination with Larry Dollison. Let me know if I should task the assignment to another office or if OEI should be the lead. Thanks

Sabrina

From: Newton, Jonathan
Sent: Tuesday, May 21, 2013 9:33 AM
To: Hamilton, Sabrina
Cc: Simms, Shavonne
Subject: Misdirected Request HQ-2013-006005

Hi Sabrina,

Sorry for the delay; this request (seeking Gina McCarthy's text messages) should go to either OAR or OEI. (b)(5) DPP [redacted].

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: Hammitt, Jennifer
To: McDermott, Marna; Miller, Kevin
Cc: Ellis, John; Kelly, Lynn
Subject: RE: Misdirected Request HQ-2013-006005
Date: Thursday, May 23, 2013 2:24:00 PM

Attorney-Client, Attorney Work Product

(b) (5) DPP, (b) (5) ACP, (b) (5) AWP [redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

Jennifer Hammitt

U.S. Environmental Protection Agency
Office of General Counsel, General Law Office
1200 Pennsylvania Ave, N.W. , MC 2377A
Washington, D.C. 20460
(202) 564-5097

From: McDermott, Marna
Sent: Thursday, May 23, 2013 1:37 PM
To: Hammitt, Jennifer; Miller, Kevin
Cc: Ellis, John
Subject: RE: Misdirected Request HQ-2013-006005

(b) (5) DPP, (b) (5) ACP, (b) (5) AWP [redacted].

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

From: Hammitt, Jennifer
Sent: Thursday, May 23, 2013 12:16 PM
To: McDermott, Marna; Miller, Kevin
Cc: Ellis, John
Subject: RE: Misdirected Request HQ-2013-006005

(b) (5) DPP, (b) (5) ACP, (b) (5) AWP [redacted]

[redacted]

Jennifer Hammitt
U.S. Environmental Protection Agency
Office of General Counsel, General Law Office
1200 Pennsylvania Ave, N.W. , MC 2377A
Washington, D.C. 20460
(202) 564-5097

From: McDermott, Marna
Sent: Thursday, May 23, 2013 12:08 PM
To: Miller, Kevin
Cc: Hammitt, Jennifer
Subject: FW: Misdirected Request HQ-2013-006005

(b) (5) DPP, (b) (5) ACP, (b) (5) AWP [redacted] Thanks.

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

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Sent: Thursday, May 23, 2013 9:32 AM
To: McDermott, Marna
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To: Weinstock, Larry
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Subject: FW: Misdirected Request HQ-2013-006005

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Sabrina

From: Newton, Jonathan
Sent: Tuesday, May 21, 2013 9:33 AM
To: Hamilton, Sabrina
Cc: Simms, Shavonne
Subject: Misdirected Request HQ-2013-006005

Hi Sabrina,

Sorry for the delay; this request (seeking Gina McCarthy's text messages) should go to either OAR or OEI. (b)(5) DPP [redacted]

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: Hammitt, Jennifer
To: OGC GLO ILPG
Subject: RE: bi-weekly items
Date: Monday, September 09, 2013 3:10:00 PM

Adding my bi-weekly items – these should all be very short:

(b) (5) DPP, (b) (5) ACP, (b) (5) AWP [redacted]

Jennifer Hammitt
U.S. Environmental Protection Agency
Office of General Counsel, General Law Office
1200 Pennsylvania Ave, N.W. , MC 2377A
Washington, D.C. 20460
(202) 564-5097

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From: Anderson, Cindy
Sent: Monday, September 09, 2013 3:04 PM
To: Albright, Scott; OGC GLO ILPG
Subject: RE: bi-weekly items

(b) (5) DPP, (b) (5) ACP, (b) (5) AWP [redacted]

- [redacted]
- [redacted]
- [redacted]

(b) (5) DPP, (b) (5) ACP, (b) (5)

Thanks!

Cindy
564-2690

From: Albright, Scott
Sent: Monday, September 09, 2013 2:43 PM
To: OGC GLO ILPG
Subject: my status tomorrow & bi-weekly items

Hello everyone,

Couple quick things:

(1) I'll be working from an Alternative Work Location tomorrow but will be reachable by phone (b) (6)) or by email during my normal work hours, 8:30 a.m. to 6:00 p.m.

(2) Please send me any items for Wednesday's **bi-weekly** and any updates to the litigation calendar by tomorrow (Tuesday) at 12 noon.

Thanks,

Scott Albright
U.S. EPA
Office of General Counsel
Information Law Practice Group
(202) 564-2884

From: Nguyen, Quoc
To: Miller, Kevin
Cc: OGC GLO ILPG
Subject: Updated Reg Review Agenda for Info Law
Date: Tuesday, August 13, 2013 11:16:46 AM
Attachments: GLO reg review ILPG 8-13-13.docx (b) (5) DPP, (b) (5) ACP, (b) (5) AWP

Attached!

Quoc P. Nguyen
Office of General Counsel
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20010
202-564-6343

CONFIDENTIAL communication for internal deliberations only; may contain deliberative, attorney-client, attorney work product, or otherwise privileged material; do not distribute outside EPA or DOJ.

From: Nguyen, Quoc
To: OGC GLO ILPG
Subject: tomorrow"s biweekly
Date: Tuesday, August 27, 2013 9:48:53 AM
Attachments: GLO reg review 8-4-13 (2).docx (b) (5) DPP, (b) (5) ACP, (b) (5) AWP

Could you send me your bi-weekly agenda items for tomorrow's reg review?

Thanks,
Quoc

Quoc P. Nguyen
Office of General Counsel
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20010
202-564-6343

CONFIDENTIAL communication for internal deliberations only; may contain deliberative, attorney-client, attorney work product, or otherwise privileged material; do not distribute outside EPA or DOJ.

From:	Nguyen, Quoc
To:	OGC GLO ILPG
Subject:	updated reg review
Date:	Tuesday, November 19, 2013 2:40:28 PM
Attachments:	GLO reg review ILPG 8-13-13.docx (b) (5) DPP, (b) (5) ACP, (b) (5) AWP

Let me know if I left anything out.

Thanks,
Quoc

Quoc P. Nguyen
Office of General Counsel
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20010
202-564-6343

CONFIDENTIAL communication for internal deliberations only; may contain deliberative, attorney-client, attorney work product, or otherwise privileged material; do not distribute outside EPA or DOJ.

From: Dominguez, Daniel
To: Minoli, Kevin
Subject: FW: Washington Times on Text messages
Date: Tuesday, April 30, 2013 7:56:35 PM

(b) (5) DPP, (b) (5) ACP

[redacted]?

Thanks.

DD

Sent with Good (www.good.com)

-----Original Message-----
From: Sandler, David
Sent: Tuesday, April 30, 2013 05:28 PM Eastern Standard Time
To: Counsel Oversight
Subject: Washington Times on Text messages

Sorry if this has been circulated already – I just came across it.

Feds hide behind potential text message loophole in sunshine law

By Stephen Dinan

The Washington Times

Monday, April 29, 2013

The researcher who exposed former EPA chief Lisa P. Jackson's private email account is now taking aim at her potential successor — and is expanding the inquiry into the world of mobile phone text messages, which are shaping up as the next frontier in open-records legal battles.

Christopher Horner, the researcher, has requested some phone text message records from Gina McCarthy, An Environmental Protection Agency assistant administrator whom President Obama has tapped for the top job. Mr. Horner wants to see the texts Ms. McCarthy was sending during the days she appeared before Congress over the past four years.

Even more broadly, he is testing the limits of federal open-records laws by going after texts, which some analysts said could be a new loophole in the federal Freedom of Information Act (FOIA).

"No text messages have apparently ever been turned over by EPA in response to FOIA and

From: Dominguez, Daniel
To: Minoli, Kevin
Subject: RE: Due date for text bill FOIA
Date: Thursday, July 18, 2013 2:01:38 PM

Thanks for getting this information to me Kevin. Having the benefit of the discussion below is also useful.

Sorry we've missed each other today. I should be at my desk when you duck out of your meetings this afternoon. I appreciate you ringing me back a couple of times.

Thanks!

DD

From: Minoli, Kevin [mailto:Minoli.Kevin@epa.gov]
Sent: Thursday, July 18, 2013 10:30 AM
To: Dominguez, Daniel
Subject: Fw: Due date for text bill FOIA

Fyi

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

From: Weinstock, Larry
Sent: Tuesday, July 16, 2013 10:08:55 AM
To: Minoli, Kevin; Kelly, Lynn; Ketcham-Colwill, Nancy; Miller, Kevin
Subject: RE: Due date for text bill FOIA

This is what I have in response to your request:

1. The response to the original request for texts on 18 specific days (number 6005)

2. Our final response

3. The request for the phone bill (6937)

4. The acknowledgment letter from the FOIA Office

5. The fee waiver from the FOIA office

6. The request for clarification on phone or text bills

7. His response to the request for clarification

I am also including:

8. His second request for texts on personal devices (6939)

9. Our final response

10. The texting bill - the count on the bill is: Total texts: 5402 texts 146 a month a little less than 5 day.

Hope this helps
Larry

From: Minoli, Kevin
Sent: Monday, July 15, 2013 7:28 PM
To: Kelly, Lynn; Ketcham-Colwill, Nancy; Miller, Kevin
Cc: Weinstock, Larry
Subject: RE: Due date for text bill FOIA

(b) (5) DPP, (b) (5) ACP [redacted]

[redacted]

If someone could put those in a clean email and send them to me tomorrow I can forward them along from the budget forum.

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: Kelly, Lynn
Sent: Monday, July 15, 2013 7:11 PM
To: Ketcham-Colwill, Nancy; Miller, Kevin
Cc: Weinstock, Larry; Minoli, Kevin
Subject: RE: Due date for text bill FOIA

(b) (5) DPP, (b) (5) ACP [redacted]

(b) (5) DPP, (b) (5) ACP [redacted]

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

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From: Ketcham-Colwill, Nancy
Sent: Monday, July 15, 2013 6:57 PM
To: Kelly, Lynn; Miller, Kevin
Cc: Weinstock, Larry
Subject: Due date for text bill FOIA

(b) (5) DPP, (b) (5) ACP [redacted]

(b) (5) DPP, (b) (5) ACP [redacted]

[redacted]

Look forward to talking tomorrow morning. My schedule is strangely wide open, so just let me know when would be good.

From: Kelly, Lynn
Sent: Monday, July 15, 2013 6:36 PM
To: Ketcham-Colwill, Nancy; Minoli, Kevin; Johnson, Alisha; Weinstock, Larry; Miller, Kevin
Cc: Hamilton, Sabrina
Subject: RE: CEI Sues EPA for Gina McCarthy's Text and Training Records

(b) (5) DPP, (b) (5) ACP [redacted]

[redacted]

[redacted]

[redacted]

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

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From: Ketcham-Colwill, Nancy
Sent: Monday, July 15, 2013 6:31 PM
To: Minoli, Kevin; Johnson, Alisha; Kelly, Lynn; Weinstock, Larry; Miller, Kevin
Cc: Hamilton, Sabrina
Subject: RE: CEI Sues EPA for Gina McCarthy's Text and Training Records

(b) (5) DPP, (b) (5) ACP [redacted]

From: Minoli, Kevin
Sent: Monday, July 15, 2013 3:28 PM
To: Johnson, Alisha; Ketcham-Colwill, Nancy; Kelly, Lynn; Weinstock, Larry; Miller, Kevin
Cc: Goffman, Joseph
Subject: RE: CEI Sues EPA for Gina McCarthy's Text and Training Records

(b) (5) DPP, (b) (5) ACP [redacted]. 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: Johnson, Alisha
Sent: Monday, July 15, 2013 3:26 PM
To: Ketcham-Colwill, Nancy; Kelly, Lynn; Weinstock, Larry; Minoli, Kevin; Miller, Kevin
Cc: Goffman, Joseph
Subject: RE: CEI Sues EPA for Gina McCarthy's Text and Training Records

(b) (5) DPP, (b) (5) ACP. Kevin?

From: Ketcham-Colwill, Nancy
Sent: Monday, July 15, 2013 3:26 PM
To: Kelly, Lynn; Weinstock, Larry; Minoli, Kevin; Miller, Kevin; Johnson, Alisha
Cc: Goffman, Joseph
Subject: RE: CEI Sues EPA for Gina McCarthy's Text and Training Records

(b) (5) DPP, (b) (5) ACP [redacted]

From: Ketcham-Colwill, Nancy
Sent: Monday, July 15, 2013 2:44 PM
To: Kelly, Lynn; Weinstock, Larry; Minoli, Kevin; Miller, Kevin; Johnson, Alisha
Cc: Goffman, Joseph
Subject: RE: CEI Sues EPA for Gina McCarthy's Text and Training Records

(b) (5) DPP, (b) (5) ACP [redacted]

(b) (5) DPP, (b) (5) ACP

From: Kelly, Lynn
Sent: Monday, July 15, 2013 2:20 PM
To: Weinstock, Larry; Minoli, Kevin; Ketcham-Colwill, Nancy; Miller, Kevin
Subject: RE: CEI Sues EPA for Gina McCarthy's Text and Training Records

(b) (5) DPP, (b) (5) ACP [redacted]

[redacted]

[redacted]

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

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From: Weinstock, Larry
Sent: Monday, July 15, 2013 2:05 PM
To: Minoli, Kevin; Kelly, Lynn; Ketcham-Colwill, Nancy; Miller, Kevin
Subject: RE: CEI Sues EPA for Gina McCarthy's Text and Training Records

[redacted]

[redacted].

(b) (5) DPP, (b) (5) ACP [redacted]

Larry

From: Minoli, Kevin
Sent: Monday, July 15, 2013 1:38 PM
To: Kelly, Lynn; Ketcham-Colwill, Nancy; Weinstock, Larry; Miller, Kevin
Subject: RE: CEI Sues EPA for Gina McCarthy's Text and Training Records

Thanks. (b) (5) DPP, (b) (5) ACP [redacted].

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: Monday, July 15, 2013 1:27 PM
To: Minoli, Kevin; Ketcham-Colwill, Nancy; Weinstock, Larry; Miller, Kevin
Subject: RE: CEI Sues EPA for Gina McCarthy's Text and Training Records

Just reading now.

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

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From: Minoli, Kevin
Sent: Monday, July 15, 2013 1:26 PM
To: Ketcham-Colwill, Nancy; Weinstock, Larry; Kelly, Lynn; Miller, Kevin
Subject: Fw: CEI Sues EPA for Gina McCarthy's Text and Training Records

Hey folks- do we have a copy of the complaint?

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

Direct Dial: 564-5551

From: Johnson, Alisha
Sent: Monday, July 15, 2013 1:05:26 PM
To: Minoli, Kevin
Subject: Fw: CEI Sues EPA for Gina McCarthy's Text and Training Records

Fyi - (b) (5) DPP, (b) (5) ACP
[redacted] ?

From: Emily Yehle <eyehle@eenews.net>
Sent: Monday, July 15, 2013 1:02:31 PM
To: Johnson, Alisha
Subject: FW: CEI Sues EPA for Gina McCarthy's Text and Training Records

Alisha,

Any comment on this lawsuit? Deadline is 3.

Thanks!

Emily Yehle
Reporter
eyehle@eenews.net
202-446-0437 (p)
202-737-5299 (f)

Environment & Energy Publishing, LLC
122 C Street, NW, Suite 722, Washington, DC 20001
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EnergyWire, ClimateWire, E&E Daily, Greenwire, E&ENews PM, E&ETV

From: Brian McNicoll <bmac@cei.org>
Date: July 15, 2013, 12:01:38 PM EDT
To: <jplautz@eenews.net>
Subject: CEI Sues EPA for Gina McCarthy's Text and Training Records

Contact:
Brian McNicoll, 202-331-2765

CEI Sues EPA for Gina McCarthy's Text and Training Records

Nearing Senate Confirmation Vote, Nominee Remains Shielded by Agency Stonewalling

WASHINGTON, D.C., July 15, 2013 – The Competitive Enterprise Institute filed suit today in federal court to force the Environmental Protection Agency to turn over phone bills for the EPA-issued PDA issued to Gina McCarthy, a top EPA official and President Obama's nominee to serve as the next administrator.

CEI's suit also seeks records EPA has failed to turn over that would reflect whether McCarthy received and/or acknowledged the required training in EPA electronic record use and preservation 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." A similar, contemporaneous request produced "Scholar of Ethics" awards to the false identity assumed by the woman McCarthy seeks to replace, former administrator Lisa Jackson. EPA has failed to provide any evidence of McCarthy receiving the required training.

A Senate vote on McCarthy's nomination could come as soon as this week despite several unanswered questions involving her electronic correspondence and recordkeeping practices, including why EPA is withholding thousands of her emails about the "war on coal" in a lawsuit and unlawfully refusing to produce even factual information such as the dates, parties and subject matter.

"Obama's EPA is waving red flags all over the place," said **Christopher Horner**, Senior Fellow at CEI and author of "The Liberal War on Transparency," research for which turned up the 'Richard Windsor' fake name email scandal and other evidence of EPA avoiding disclosure requirements. "Ultimately, we will learn if EPA's problems with non-official email accounts, and accounts not identifying the account holder, extend to their use of private accounts for texting or even destroying this alternative to email, as it seems. Resolving the questions in today's suit, and about her use of a personal account, should be necessary conditions to moving forward on her nomination. This also would do much to address the growing impression Gina McCarthy has something to hide and that EPA is going to great lengths to help her hide it."

CEI submitted the IT-training request under the Freedom of Information Act in April, as well as one for text messages from McCarthy's EPA-issued phone on 18 specific dates. The latter request came after CEI was reliably informed McCarthy was warned to stop texting after concerns about the propriety of messages, specifically those sent on days she appeared before Congress.

EPA has claimed it has no such text messages. CEI then sought McCarthy's relevant phone bills, which should establish whether she used the text feature as an alternative to email on her EPA-assigned device, including on those dates. In a separate request, presently on administrative appeal, CEI also seeks work-related

text messages from McCarthy's non-EPA-issued phone, which under EPA rules are public records subject to FOIA and which McCarthy is in fact responsible for turning over to EPA without being asked.

EPA has indicated satisfying CEI's request for phone bills would take two hours or less. But to further expedite matters CEI narrowed the request to seek only those portions that reflect text activity. If those records were created, on any device, EPA must explain what happened between those records being created and their "no records" response. The interim step between creation and claiming "no records," is that they have been destroyed – a violation of federal law.

EPA has apparently yet to include text messages in response to any request for records whether from Congress or through the FOIA process, although the law plainly says these messages are public records. CEI's investigation of EPA's transparency practices has revealed a pattern of resistance to disclosure of its activities. Already this has led to an Inspector General inquiry into EPA's instant messaging practices, presumably including whether EPA preserves IMs as required.

"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.]"

Horner noted a pattern of efforts on behalf of EPA to protect McCarthy until she can be approved by the Senate. Already, in response to a court order for EPA to turn over about 12,000 emails related to "climate" and "coal," the dog not barking in those relatively few emails EPA did turn over was McCarthy, even though she is the lieutenant in charge of such matters. Thousands of those emails that were produced were heavily, sometimes comically redacted despite a directive from President Obama that FOIA requests should be treated with "a presumption of disclosure." These records did nonetheless reveal McCarthy was among the circle with whom Jackson used the false identity "Richard Windsor," rather than her own name, on email communications with top staffers and key outside allies. Jackson resigned after the court order to produce them, apparently to avoid answering questions about her decision to conduct certain official correspondence as such.

Other EPA executives, including Jim Martin, director of EPA's Region 8 in Denver, have resigned after having been found during litigation initiated by CEI to have regularly used a private email account to conduct official business. CEI similarly awaits emails from the Region 9 administrator's Comcast email account which he used for EPA-related correspondence. EPA's general counsel also resigned the day Horner released copies of screen shots establishing that the Windsor account was installed on Jackson's EPA computers.

"This particular case is one step on the path to determining the extent to which

EPA is not meeting its obligations to keep the public informed," Horner said. "EPA should have moved matters along by now, particularly with Ms. McCarthy subject to scrutiny for a promotion."

► **Read the filed complaint here.**

CEI is a non-profit, non-partisan public policy group dedicated to the principles of free enterprise and limited government. For more information about CEI, please visit our website, cei.org, and blogs, Globalwarming.org and OpenMarket.org. Follow CEI on Twitter! Twitter.com/ceidotorg.

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This message was sent to jplautz@eenews.net from:

Competitive Enterprise Institute | 1899 L Street NW 12th Floor | Washington, DC 20036

Unsubscribe | **Forward To a Friend**

```
********************** ATTACHMENT NOT DELIVERED  ******************

This Email message contained an attachment named
  image001.jpg
which may be a computer program. This attached computer program could
contain a computer virus which could cause harm to EPA's computers,
network, and data.  The attachment has been deleted.

This was done to limit the distribution of computer viruses introduced
into the EPA network.  EPA is deleting all computer program attachments
sent from the Internet into the agency via Email.

If the message sender is known and the attachment was legitimate, you
should contact the sender and request that they rename the file name
extension and resend the Email with the renamed attachment.  After
receiving the revised Email, containing the renamed attachment, you can
rename the file extension to its correct name.

For further information, please contact the EPA Call Center at
(866) 411-4EPA (4372). The TDD number is (866) 489-4900.

**********************  ATTACHMENT NOT DELIVERED **********************
```

congressional oversight requests for 'records' or 'electronic records.' Yet they are undeniably agency records under various relevant statutes," Mr. Horner told The Washington Times. "Has EPA been destroying these records or preserving them as required, but merely hiding them from the public and from Congress?"

The EPA didn't return messages Friday or Monday asking about its policy on storing or searching text messages, nor did the agency answer questions about Ms. McCarthy in particular, but documents on the agency's website seem to suggest that employees are supposed to preserve their text messages.

The Obama administration overall doesn't appear to have done much work on text messages and open records.

The White House budget office didn't return messages seeking comment Friday or Monday. The Washington Times also reached out to a handful of departments Monday to ask about their text message open-records policies, but didn't get an answer from any of them.

Even congressional champions of open-records laws don't appear to have focused on the intersection between texts and FOIA.

The National Archives and Records Administration, which is responsible for preserving federal records, said it hasn't issued any guidance and said the only texts that would fall under open-records preservation rules are those that constitute a "record" under the Federal Records Act.

For messages that are deemed "non-transitory federal records," which means they must be preserved beyond 180 days, "agencies should take reasonable steps to preserve the text, including either forwarding to an email system, or memorializing in some other fashion (just like voice mails)," Chris Isleib, a spokesman for the National Archives, said in an email.

When it gets FOIA requests, the National Archives takes reasonable steps to find any records that would be responsive, including those on electronic media, Mr. Isleib said.

Ken Bunting, executive director of the National Freedom of Information Coalition, said states also are grappling with questions of how text messages fit with their own sunshine laws.

"My feeling is, any communication that would be a public record if done on paper ought to be a public record if done electronically and whatever preservation policies that existed for paper records ought to be at least as thorough for electronic preservation," he said. "Unfortunately, what we already know is that people use technology to hide stuff."

Mr. Bunting's group is holding its annual conference in May, and he said one of the major focuses will be on what he called "digital sleight-of-hand" that officials are using to avoid scrutiny.

The EPA, in particular, has been the subject of complaints about its record-keeping.

Mr. Horner last year exposed Ms. Jackson's use of an email alias, "Richard Windsor," which she used for internal business. He questioned whether that account was being searched when reporters or the public asked to see electronic records.

Mr. Horner and several congressional committees looking into the EPA also discovered other agency officials using personal emails to conduct government business — a violation of the Freedom of Information Act.

The acting administrator earlier this month sent out an email telling all employees that they would have to go through retraining on open-records laws. The EPA's internal auditor also is looking into how well the agency is complying with the law.

The questions are emerging as Ms. McCarthy awaits a Senate vote on her nomination to become the agency's director.

At her confirmation hearing, she fielded numerous questions about EPA policies. She said at one point that she couldn't have used computer instant messages to circumvent open-records requests because she doesn't know how to use the EPA's IM program.

She was not asked about text messages.

Mr. Horner said he has been told she sent some particularly "salty" messages during times when she appeared before congressional committees. He filed a request last week for those records.

It is unclear whether those texts would fall under the law's definition of "non-transitory" records.

It could even be questionable what constitutes a text. Trying to head that off, Mr. Horner wrote a long footnote in his FOIA request detailing the kinds of things he believes should be covered: "SMS or MMS messages, all electronic messages between two or more mobile phones or fixed or portable devices over a phone network that are not sent from an email client. In the event the handheld device assigned to Ms. McCarthy for telephone/data use is an Apple device, this request also contemplates iMessages."

Read more: http://www.washingtontimes.com/news/2013/apr/29/do-text-messages-from-federal-officials-belong-in-/?page=2#ixzz2Rz5BDoVm

David Sandler
Associate White House Counsel
(b) (6)

From: Minoli, Kevin
To: Daniel Dominguez
Subject: Fw: Due date for text bill FOIA
Date: Thursday, July 18, 2013 10:30:08 AM
Attachments: Orignial text request letter 6005 .pdf
Final Response request for text EPA 6005.pdf
Horner (McCarthy Phone Bills) Rqst.pdf
Horner CEI Acknowledgement Ltr .docx
Fee Waiver phone bill 006937.pdf
request for clarification.phone bills.pdf
Response to request for claification.doc
Personal Text Request Letter 6939.pdf
Personal Text request Final Response 6939.pdf
202-596-0247 - Text bill - Jul 09-Jun 12.xlsx (b) (5) DPP, (b) (5) ACP, (b) (5) AWP, (b) (6)

Fyi

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

From: Weinstock, Larry
Sent: Tuesday, July 16, 2013 10:08:55 AM
To: Minoli, Kevin; Kelly, Lynn; Ketcham-Colwill, Nancy; Miller, Kevin
Subject: RE: Due date for text bill FOIA

This is what I have in response to your request:

1. The response to the original request for texts on 18 specific days (number 6005)

2. Our final response

3. The request for the phone bill (6937)

4. The acknowledgment letter from the FOIA Office

5. The fee waiver from the FOIA office

6. The request for clarification on phone or text bills

7. His response to the request for clarification

I am also including:

8. His second request for texts on personal devices (6939)

9. Our final response

10. The texting bill - (b) (5) DPP, (b) (5) ACP, (b) (5) AWP

day.

Hope this helps
Larry

From: Minoli, Kevin
Sent: Monday, July 15, 2013 7:28 PM
To: Kelly, Lynn; Ketcham-Colwill, Nancy; Miller, Kevin
Cc: Weinstock, Larry
Subject: RE: Due date for text bill FOIA

(b) (5) DPP, (b) (5) ACP, (b) (5) AWP [redacted]

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: Kelly, Lynn
Sent: Monday, July 15, 2013 7:11 PM
To: Ketcham-Colwill, Nancy; Miller, Kevin
Cc: Weinstock, Larry; Minoli, Kevin
Subject: RE: Due date for text bill FOIA

(b) (5) DPP, (b) (5) ACP, (b) (5) AWP [redacted]

(b) (5) DPP, (b) (5) ACP, (b) (5) AWP

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

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From: Ketcham-Colwill, Nancy
Sent: Monday, July 15, 2013 6:57 PM
To: Kelly, Lynn; Miller, Kevin
Cc: Weinstock, Larry
Subject: Due date for text bill FOIA

(b) (5) DPP, (b) (5) ACP

Look forward to talking tomorrow morning. My schedule is strangely wide open, so just let me know

when would be good.

From: Kelly, Lynn
Sent: Monday, July 15, 2013 6:36 PM
To: Ketcham-Colwill, Nancy; Minoli, Kevin; Johnson, Alisha; Weinstock, Larry; Miller, Kevin
Cc: Hamilton, Sabrina
Subject: RE: CEI Sues EPA for Gina McCarthy's Text and Training Records

(b) (5) DPP, (b) (5) ACP, (b) (5) AWP [redacted]

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

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From: Ketcham-Colwill, Nancy
Sent: Monday, July 15, 2013 6:31 PM
To: Minoli, Kevin; Johnson, Alisha; Kelly, Lynn; Weinstock, Larry; Miller, Kevin
Cc: Hamilton, Sabrina
Subject: RE: CEI Sues EPA for Gina McCarthy's Text and Training Records

(b) (5) DPP, (b) (5) ACP [redacted]

From: Minoli, Kevin
Sent: Monday, July 15, 2013 3:28 PM
To: Johnson, Alisha; Ketcham-Colwill, Nancy; Kelly, Lynn; Weinstock, Larry; Miller, Kevin
Cc: Goffman, Joseph

Subject: RE: CEI Sues EPA for Gina McCarthy's Text and Training Records

I (b) (5) DPP, (b) (5) ACP, (b) (5) AWP . 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: Johnson, Alisha
Sent: Monday, July 15, 2013 3:26 PM
To: Ketcham-Colwill, Nancy; Kelly, Lynn; Weinstock, Larry; Minoli, Kevin; Miller, Kevin
Cc: Goffman, Joseph
Subject: RE: CEI Sues EPA for Gina McCarthy's Text and Training Records

(b) (5) DPP, (b) (5) ACP ?

From: Ketcham-Colwill, Nancy
Sent: Monday, July 15, 2013 3:26 PM
To: Kelly, Lynn; Weinstock, Larry; Minoli, Kevin; Miller, Kevin; Johnson, Alisha
Cc: Goffman, Joseph
Subject: RE: CEI Sues EPA for Gina McCarthy's Text and Training Records

(b) (5) DPP, (b) (5) ACP

From: Ketcham-Colwill, Nancy
Sent: Monday, July 15, 2013 2:44 PM
To: Kelly, Lynn; Weinstock, Larry; Minoli, Kevin; Miller, Kevin; Johnson, Alisha
Cc: Goffman, Joseph
Subject: RE: CEI Sues EPA for Gina McCarthy's Text and Training Records

(b) (5) DPP, (b) (5) ACP

(b) (5) DPP, (b) (5) ACP [redacted]

From: Kelly, Lynn
Sent: Monday, July 15, 2013 2:20 PM
To: Weinstock, Larry; Minoli, Kevin; Ketcham-Colwill, Nancy; Miller, Kevin
Subject: RE: CEI Sues EPA for Gina McCarthy's Text and Training Records

(b) (5) DPP, (b) (5) ACP, (b) (5) AWP [redacted]

(b) (5) DPP, (b) (5) ACP, (b) (5) AWP

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

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From: Weinstock, Larry
Sent: Monday, July 15, 2013 2:05 PM
To: Minoli, Kevin; Kelly, Lynn; Ketcham-Colwill, Nancy; Miller, Kevin
Subject: RE: CEI Sues EPA for Gina McCarthy's Text and Training Records

Larry

From: Minoli, Kevin
Sent: Monday, July 15, 2013 1:38 PM
To: Kelly, Lynn; Ketcham-Colwill, Nancy; Weinstock, Larry; Miller, Kevin

Subject: RE: CEI Sues EPA for Gina McCarthy's Text and Training Records

Thanks. (b) (5) DPP, (b) (5) ACP [redacted]

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: Monday, July 15, 2013 1:27 PM
To: Minoli, Kevin; Ketcham-Colwill, Nancy; Weinstock, Larry; Miller, Kevin
Subject: RE: CEI Sues EPA for Gina McCarthy's Text and Training Records

Just reading now.

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

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From: Minoli, Kevin
Sent: Monday, July 15, 2013 1:26 PM
To: Ketcham-Colwill, Nancy; Weinstock, Larry; Kelly, Lynn; Miller, Kevin
Subject: Fw: CEI Sues EPA for Gina McCarthy's Text and Training Records

Hey folks- do we have a copy of the complaint?

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

From: Johnson, Alisha
Sent: Monday, July 15, 2013 1:05:26 PM
To: Minoli, Kevin
Subject: Fw: CEI Sues EPA for Gina McCarthy's Text and Training Records

Fyi - (b) (5) DPP, (b) (5) ACP [redacted] ?

From: Emily Yehle <eyehle@eenews.net>
Sent: Monday, July 15, 2013 1:02:31 PM
To: Johnson, Alisha

Subject: FW: CEI Sues EPA for Gina McCarthy's Text and Training Records

Alisha,

Any comment on this lawsuit? Deadline is 3.

Thanks!

Emily Yehle
Reporter
eyehle@eenews.net
202-446-0437 (p)
202-737-5299 (f)

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From: Brian McNicoll <bmac@cei.org>
Date: July 15, 2013, 12:01:38 PM EDT
To: <jplautz@eenews.net>
Subject: CEI Sues EPA for Gina McCarthy's Text and Training Records

Contact:
Brian McNicoll, 202-331-2765

CEI Sues EPA for Gina McCarthy's Text and Training Records

Nearing Senate Confirmation Vote, Nominee Remains Shielded by Agency Stonewalling

WASHINGTON, D.C., July 15, 2013 – The Competitive Enterprise Institute filed suit today in federal court to force the Environmental Protection Agency to turn over phone bills for the EPA-issued PDA issued to Gina McCarthy, a top EPA official and President Obama's nominee to serve as the next administrator.

CEI's suit also seeks records EPA has failed to turn over that would reflect whether McCarthy received and/or acknowledged the required training in EPA electronic record use and preservation 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." A similar, contemporaneous request produced "Scholar of Ethics" awards to the false identity assumed by the woman McCarthy seeks to replace,

former administrator Lisa Jackson. EPA has failed to provide any evidence of McCarthy receiving the required training.

A Senate vote on McCarthy's nomination could come as soon as this week despite several unanswered questions involving her electronic correspondence and recordkeeping practices, including why EPA is withholding thousands of her emails about the "war on coal" in a lawsuit and unlawfully refusing to produce even factual information such as the dates, parties and subject matter.

"Obama's EPA is waving red flags all over the place," said **Christopher Horner**, Senior Fellow at CEI and author of "The Liberal War on Transparency," research for which turned up the 'Richard Windsor' fake name email scandal and other evidence of EPA avoiding disclosure requirements. "Ultimately, we will learn if EPA's problems with non-official email accounts, and accounts not identifying the account holder, extend to their use of private accounts for texting or even destroying this alternative to email, as it seems. Resolving the questions in today's suit, and about her use of a personal account, should be necessary conditions to moving forward on her nomination. This also would do much to address the growing impression Gina McCarthy has something to hide and that EPA is going to great lengths to help her hide it."

CEI submitted the IT-training request under the Freedom of Information Act in April, as well as one for text messages from McCarthy's EPA-issued phone on 18 specific dates. The latter request came after CEI was reliably informed McCarthy was warned to stop texting after concerns about the propriety of messages, specifically those sent on days she appeared before Congress.

EPA has claimed it has no such text messages. CEI then sought McCarthy's relevant phone bills, which should establish whether she used the text feature as an alternative to email on her EPA-assigned device, including on those dates. In a separate request, presently on administrative appeal, CEI also seeks work-related text messages from McCarthy's non-EPA-issued phone, which under EPA rules are public records subject to FOIA and which McCarthy is in fact responsible for turning over to EPA without being asked.

EPA has indicated satisfying CEI's request for phone bills would take two hours or less. But to further expedite matters CEI narrowed the request to seek only those portions that reflect text activity. If those records were created, on any device, EPA must explain what happened between those records being created and their "no records" response. The interim step between creation and claiming "no records," is that they have been destroyed – a violation of federal law.

EPA has apparently yet to include text messages in response to any request for records whether from Congress or through the FOIA process, although the law plainly says these messages are public records. CEI's investigation of EPA's transparency practices has revealed a pattern of resistance to disclosure of its activities. Already this has led to an Inspector General inquiry into EPA's instant messaging practices, presumably including whether EPA preserves IMs as required.

"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.]”

Horner noted a pattern of efforts on behalf of EPA to protect McCarthy until she can be approved by the Senate. Already, in response to a court order for EPA to turn over about 12,000 emails related to “climate” and “coal,” the dog not barking in those relatively few emails EPA did turn over was McCarthy, even though she is the lieutenant in charge of such matters. Thousands of those emails that were produced were heavily, sometimes comically redacted despite a directive from President Obama that FOIA requests should be treated with “a presumption of disclosure.” These records did nonetheless reveal McCarthy was among the circle with whom Jackson used the false identity “Richard Windsor,” rather than her own name, on email communications with top staffers and key outside allies. Jackson resigned after the court order to produce them, apparently to avoid answering questions about her decision to conduct certain official correspondence as such.

Other EPA executives, including Jim Martin, director of EPA’s Region 8 in Denver, have resigned after having been found during litigation initiated by CEI to have regularly used a private email account to conduct official business. CEI similarly awaits emails from the Region 9 administrator’s Comcast email account which he used for EPA-related correspondence. EPA’s general counsel also resigned the day Horner released copies of screen shots establishing that the Windsor account was installed on Jackson’s EPA computers.

“This particular case is one step on the path to determining the extent to which EPA is not meeting its obligations to keep the public informed,” Horner said. “EPA should have moved matters along by now, particularly with Ms. McCarthy subject to scrutiny for a promotion.”

► **Read the filed complaint here.**

CEI is a non-profit, non-partisan public policy group dedicated to the principles of free enterprise and limited government. For more information about CEI, please visit our website, cei.org, and blogs, Globalwarming.org and OpenMarket.org. Follow CEI on Twitter! Twitter.com/ceidotorg.

This message was sent to jplautz@eenews.net from:

Competitive Enterprise Institute | 1899 L Street NW 12th Floor | Washington, DC 20036

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From:	Minoli, Kevin
To:	Daniel Dominguez
Subject:	Fw: FOIA Request
Date:	Tuesday, April 30, 2013 8:40:39 PM
Attachments:	Request-for-Gina-McCarthy-Texts.pdf

Hi Danny- Here it is. Kevin

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

From: Minoli, Kevin
Sent: Friday, April 26, 2013 3:32:28 PM
To: Garbow, Avi
Cc: McDermott, Marna
Subject: FOIA Request

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

REQUEST UNDER THE FREEDOM OF INFORMATION ACT

April 25, 2013

National Freedom of Information Office
U.S. EPA
FOIA and Privacy Branch
1200 Pennsylvania Avenue, N.W. (2822T)
Washington, DC 20460

RE: FOIA Request – Certain Agency Records: Gina McCarthy Text Messages

BY ELECTRONIC MAIL: hq.foia@epa.gov

National Freedom of Information Officer,

On behalf of the Competitive Enterprise Institute (CEI), please consider this request pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552 et seq.[1] CEI is a non-profit public policy institute organized under section 501(c)3 of the tax code and with research, investigative journalism and publication functions, as well as a transparency initiative seeking public records relating to environmental and energy policy and how policymakers use public resources, all of which include broad dissemination of public information obtained under open records and freedom of information laws.

---

[1] We choose to not file this via FOIAOnline because, as we have noted to FOIAOnline tech support and in recent requests to no useful effect, that system does not function with Safari web browser or with the recommended web browsers with (at least the undersigned's two) Mac computers, impeding requester's ability to attach additional discussion and limiting discussion of, e.g., fee waiver, to two thousand characters per field.

Please provide us, within twenty working days,[2] copies of all text messages sent by Assistant Administrator for Air and Radiation Gina McCarthy on a mobile telephone provided for her use by the Agency, on the following, eighteen days:

<u>2009</u>: July 9, 2009; July 14, 2009

<u>2010</u>: July 22, 2010; March 4, 2010; March 24, 2010

<u>2011</u>: March 1, 2011; March 13, 2011; March 24, 2011; April 13, 2011; May 13, 2011; June 30, 2011; September 8, 2011; September 15, 2011; October 12, 2011; October 25, 2011

<u>2012</u>: February 28, 2012; June 19, 2012; June 29, 2012.

<u>Background to this Records Request</u>

We are interested in EPA's compliance with its legal obligation to maintain and preserve text messages sent or received on Agency devices, provided for the performance of Agency duties, as federal records and Agency records. Text messages, like the other alternative to email EPA provides its employees, instant messages, are unquestionably records,[3] about which there is at present no information indicating are managed by EPA as federal records and/or as "records" under FOIA. Indeed, it is our understanding including by information, and belief, that EPA is not

---

[2] See *Citizens for Responsible Ethics in Washington v. Federal Election Commission*, --- F.3d ----, 2013 WL 1296289 (C.A.D.C.), April 2, 2013, and discussion at pages 20-21, *infra*.

[3] See, e.g., http://www.archives.gov/records-mgmt/initiatives/im-faq.html, http://www.epa.gov/records/faqs/email.htm, and Memo to All Staff, "Transparency at EPA" by Acting Administrator Bob Perciasepe dated April 8, 2013 (e.g., "Finally, the Inspector General currently is conducting an audit of the agency's records management practices and procedures. We have suggested they place focus on electronic records including email and instant messaging. While we have made progress in these areas, we are committed to addressing any concerns or weaknesses that are identified in this audit and to working collaboratively to strengthen our records management system and policies.").

producing text message transcripts or discussions in response to FOIA or congressional oversight requests for "records" or "electronic records".

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.

As such, we seek to ascertain whether EPA is in fact managing these records properly.

EPA Owes CEI a Reasonable Search, Which Includes a Non-Conflicted Search

FOIA requires an agency to make a reasonable search of records, judged by the specific facts surrounding each request. *See, e.g., Itrurralde v. Comptroller of the Currency*, 315 F.3d 311, 315 (D.C. Cir. 2003); *Steinberg v. DOJ*, 23 F.3d 548, 551 (D.C. Cir. 1994).

It is well-settled that Congress, through FOIA, "sought 'to open agency action to the light of public scrutiny.'" *DOJ v. Reporters Comm. for Freedom of Press*, 498 U.S. 749, 772 (1989) (*quoting Dep't of Air Force v. Rose*, 425 U.S. 353, 372 (1976)). The legislative history is replete with reference to the "'general philosophy of full agency disclosure'" that animates the statute. *Rose*, 425 U.S. at 360 (*quoting* S.Rep. No. 813, 89th Cong., 2nd Sess., 3 (1965)). The act is designed to "pierce the veil of administrative secrecy and to open agency action to the light of scrutiny." *Department of the Air Force v. Rose*, 425 U.S. 352 (1976). It is a transparency-forcing law, consistent with "the basic policy that disclosure, not secrecy, is the dominant objective of the Act." *Id*.

A search must be "reasonably calculated to uncover all relevant documents." *See, e.g., Nation Magazine v. U.S. Customs Serv.*, 71 F.3d 885, 890 (D.C. Cir. 1995). In determining whether or not a search is "reasonable," courts have been mindful of the purpose of FOIA to bring about the broadest possible disclosure. *See Campbell v. DOJ*, 164 F.3d 20, 27 (D.C. Cir. 1999)

("reasonableness" is assessed "consistent with congressional intent tilting the scale in favor of disclosure").

The reasonableness of the search activity is determined ad hoc but there are rules, including that the search must be conducted free from conflict of interest. (In searching for relevant documents, agencies have a duty "to ensure that abuse and conflicts of interest do not occur." *Cuban v. S.E.C.*, 744 F.Supp.2d 60, 72 (D.D.C. 2010). See also *Kempker-Cloyd v. Department of Justice*, No. 97-cv-253, 1999 U.S. Dist. LEXIS 4813, at *12, *24 (W.D. Mich. Mar. 12, 1999) (holding that the purpose of FOIA is defeated if employees can simply assert that records are personal without agency review; faulting Department of Justice for the fact that it "was aware that employee had withheld records as 'personal' but did not require that 'he submit those records for review' by the Department.)).

For these reasons CEI expects expect this search be conducted free from conflict of interest. Conflicted parties include the National FOIA Officer Larry Gottesman, whom CEI has informed the Agency on several recent occasions is and has proved himself to be conflicted out of reviewing requests by the undersigned due to undersigned having named him in litigation for improper behavior,[4] which Mr. Gottesman followed by a spate of apparently retaliatory actions in his official capacity. Mr. Gottseman should have no role, formal or informal, in responding to any aspect of this request.

---

[4] Re: HQ-FOI-0152-12 and HQ-FOI-0158-12, filed as *American Tradition Institute v. EPA*, CV: 13-112 U.S. District Court for the District of Columbia. This filing also led to unfavorable press coverage (see, e.g., "Public interest group sues EPA for FOIA delays, claims agency ordered officials to ignore requests", *Washington Examiner*, January 28, 2013, http://washingtonexaminer.com/public-interest-group-sues-epa-for-foia-delays-claims-agency-ordered-officials-to-ignore-requests/article/2519881), and was followed by a series of facially improper fee waiver denials to undersigned, by Mr. Gottesman, who regardless should not have participated in the review of these matters.

Withholding and Redaction

Please identify and inform us of all responsive or potentially responsive records within the statutorily prescribed time, and the basis of any claimed exemptions or privilege and to which specific responsive or potentially responsive record(s) such objection applies.

If EPA claims any records or portions thereof are exempt under one of FOIA's discretionary exemptions we request you exercise that discretion and release them consistent with statements by the President and Attorney General, *inter alia*, that "**The old rules said that if there was a defensible argument for not disclosing something to the American people, then it should not be disclosed. That era is now over, starting today" (President Barack Obama**, January 21, 2009), and "**Under the Attorney General's Guidelines, agencies are encouraged to make discretionary releases. Thus, even if an exemption would apply to a record, discretionary disclosures are encouraged**. Such releases are possible for records covered by a number of FOIA exemptions, including Exemptions 2, 5, 7, 8, and 9, but they will be most applicable under Exemption 5." (Department of Justice, Office of Information Policy, OIP Guidance, "Creating a 'New Era of Open Government'").

It is difficult to see how the requested records, sent during or otherwise on days of EPA-related hearings that Ms. McCarthy attended in her EPA capacity, on a device provided by EPA, exclusively for the performance of Agency duties, with extremely limited circumstantial exceptions permitted, could be deemed "private"; that is, that their release would constitute an unwarranted invasion of personal privacy. For the same reasons of context it is further difficult to see how this could entail substantial review time.

Nonetheless, if your office takes the position that any portion of the requested records is exempt from disclosure, please inform us of the basis of any partial denials or redactions. In the event that some portions of the requested records are properly exempt from disclosure, please disclose any reasonably segregable, non-exempt portions of the requested records. See 5 U.S.C. §552(b).

Further, we request that you provide us with an index of those documents as required under V*aughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973), cert. denied, 415 U.S. 977 (1972), with sufficient specificity "to permit a reasoned judgment as to whether the material is actually exempt under FOIA" pursuant to *Founding Church of Scientology v. Bell*, 603 F.2d 945, 959 (D.C. Cir. 1979), and "describ[ing] each document or portion thereof withheld, and for each withholding it must discuss the consequences of supplying the sought-after information." *King v. Department of Justice*, 830 F.2d 210, 223-24 (D.C. Cir. 1987).

We remind EPA it cannot withhold entire documents rather than producing their "factual content" and redacting the confidential advice and opinions. As the D.C. Court of Appeals noted, the agency must "describe the factual content of the documents and disclose it or provide an adequate justification for concluding that it is not segregable from the exempt portions of the documents." *Id.* at 254 n.28. As an example of how entire records should not be withheld when there is reasonably segregable information, we note that basic identifying information (who, what, when) is not "deliberative". As the courts have emphasized, "the deliberative process privilege directly protects advice and opinions and *does not permit the nondisclosure of underlying facts* unless they would indirectly reveal the advice, opinions, and evaluations

circulated within the agency as part of its decision-making process." *See Mead Data Central v. Department of the Air Force*, 566 F.2d 242, 254 n.28 (D.C. Cir. 1977) (emphasis added).

That means, do not redact the requesting party and the Agency's initial determination, or grounds there-for, in the event that determination was a denial. For example, EPA must cease its ongoing pattern with CEI of over-broad claims of b5 "deliberative process" exemptions to withhold information which is not in fact truly antecedent to the adoption of an Agency policy (*see Jordan v. Do*J, 591 F.2d 753, 774 (D.C. Cir. 1978)), but merely embarrassing or inconvenient to disclose.

If it is your position that a document contains non-exempt segments and that those non-exempt segments are so dispersed throughout the documents as to make segregation impossible, please state what portion of the document is non-exempt and how the material is dispersed through the document. *See Mead Data Central v. Department of the Air Force*, 455 F.2d at 261.

Claims of non-segregability must be made with the same practical detail as required for claims of exemption in a *Vaughn* index. If a request is denied in whole, please state specifically that it is not reasonable to segregate portions of the record for release.

Satisfying this Request contemplates providing copies of documents, in electronic format if you possess them as such, otherwise photocopies are acceptable.

Please provide responsive documents in complete form, with any appendices or attachments as the case may be.

Request for Fee Waiver

This discussion is detailed as a result of our recent experience of agencies, particularly EPA, improperly using denial of fee waivers to impose an economic barrier to access, an improper means of delaying or otherwise denying access to public records, despite our history of regularly obtaining fee waivers. We are not alone in this experience.[5]

1) Disclosure would substantially contribute to the public at large's understanding of governmental operations or activities, on a matter of demonstrable public interest

CEI requests waiver or reduction of all costs pursuant to 5 U.S.C. § 552(a)(4)(A)(iii) ("Documents shall be furnished without any charge...if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of government and is not primarily in the commercial interest of the requester"); see also 40 C.F.R. §2.107(l), and (c).

The information sought in this request is not sought for a commercial purpose. Requester is organized and recognized by the Internal Revenue Service as a 501(c)3 educational organization (not a "Religious...Charitable, Scientific, Literary, Testing for Public Safety, to Foster National or International Amateur Sports Competition, or Prevention of Cruelty to Children or Animals Organization[]"). With no possible commercial interest in these records, an

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[5] *See* February 21, 2012 letter from public interest or transparency groups to four federal agencies requesting records regarding a newly developed pattern of fee waiver denials and imposition of "exorbitant fees" under FOIA as a barrier to access, available at http://images.politico.com/global/2012/03/aclueffeewvrfoialtr.pdf; *see also National Security Counselors v. CIA* (CV: 12-cv-00284(BAH), filed D.D.C Feb. 22, 2012); *see also* "Groups Protest CIA's Covert Attack on Public Access," OpentheGovernment.org, February 23, 2012, http://www.openthegovernment.org/node/3372.

assessment of that non-existent interest is not required in any balancing test with the public's interest.

As a non-commercial requester, CEI is entitled to liberal construction of the fee waiver standards. 5 U.S.C.S. § 552(a)(4)(A)(iii), *Perkins v. U.S. Department of Veterans Affairs*, 754 F. Supp. 2d 1 (D.D.C. Nov. 30, 2010). Specifically, the public interest fee waiver provision "is to be liberally construed in favor of waivers for noncommercial requesters." *McClellan Ecological Seepage Situation v. Carlucci*, 835 F. 2d 1284, 2184 (9th Cir. 1987).

FOIA is aimed in large part at promoting active oversight roles of watchdog public advocacy groups. "The legislative history of the fee waiver provision reveals that it was added to FOIA 'in an attempt to prevent government agencies from using high fees to discourage certain types of requesters, and requests,' in particular those from journalists, scholars and nonprofit public interest groups." *Better Government Ass'n v. State*, 780 F.2d 86, 88-89 (D.C. Cir. 1986) (fee waiver intended to benefit public interest watchdogs), citing to *Ettlinger v. FBI*, 596 F. Supp. 867, 872 (D.Mass. 1984); SEN. COMM. ON THE JUDICIARY, AMENDING THE FOIA, S. REP. NO. 854, 93rd Cong., 2d Sess. 11-12 (1974)).[6]

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[6] This was grounded in the recognition that the two plaintiffs in that merged appeal were, like Requester, public interest non-profits that "rely heavily and frequently on FOIA and its fee waiver provision to conduct the investigations that are essential to the performance of certain of their primary institutional activities -- publicizing governmental choices and highlighting possible abuses that otherwise might go undisputed and thus unchallenged. These investigations are the necessary prerequisites to the fundamental publicizing and mobilizing functions of these organizations. Access to information through FOIA is vital to their organizational missions." *Better Gov't v. State*. They therefore, like Requester, "routinely make FOIA requests that potentially would not be made absent a fee waiver provision", requiring the court to consider the"Congressional determination that such constraints should not impede the access to information for appellants such as these." *Id*.

Congress enacted FOIA clearly intending that "fees should not be used for the purpose of discouraging requests for information or as obstacles to disclosure of requested information." *Ettlinger v. FBI*, citing Conf. Comm. Rep., H.R. Rep. No. 1380, 93d Cong., 2d Sess. 8 (1974) at 8. Improper refusal of fees as a means of withholding records from a FOIA requester constitutes improper withholding. *Ettlinger v. FBI*.

Given this, "insofar as ...[agency] guidelines and standards in question act to discourage FOIA requests and to impede access to information for precisely those groups Congress intended to aid by the fee waiver provision, they inflict a continuing hardship on the non-profit public interest groups who depend on FOIA to supply their lifeblood -- information." *Better Gov't v. State* (internal citations omitted). The courts therefore will not permit such application of FOIA requirements that "'chill' the ability and willingness of their organizations to engage in activity that is not only voluntary, but that Congress explicitly wished to encourage." *Id*. As such, agency implementing regulations may not facially or in practice interpret FOIA's fee waiver provision in a way creating a fee barrier for Requester.

"This is in keeping with the statute's purpose, which is 'to remove the roadblocks and technicalities which have been used by . . . agencies to deny waivers.'" *Citizens for Responsibility & Ethics in Washington v. U.S. Dep't of Educ.*, 593 F. Supp. 261, 268 (D.D.C. 2009), citing to *McClellan Ecological Seepage Situation v. Carlucci*, 835 F.2d 1282, 1284 (9th. Cir. 1987)(quoting 132 Cong. Rec. S16496 (Oct. 15, 1986) (statement of Sen. Leahy).

Requester's ability to utilize FOIA -- as well as many nonprofit organizations, educational institutions and news media who will benefit from disclosure -- depends on its ability to obtain fee waivers. For this reason, "Congress explicitly recognized the importance and the

difficulty of access to governmental documents for such typically under-funded organizations and individuals when it enacted the 'public benefit' test for FOIA fee waivers. This waiver provision was added to FOIA 'in an attempt to prevent government agencies from using high fees to discourage certain types of requesters and requests,' in a clear reference to requests from journalists, scholars and, most importantly for our purposes, nonprofit public interest groups. Congress made clear its intent that fees should not be utilized to discourage requests or to place obstacles in the way of such disclosure, forbidding the use of fees as '"toll gates" on the public access road to information.'" *Better Gov't Ass'n v. Department of State*.

As the *Better Government* court also recognized, public interest groups employ FOIA for activities "essential to the performance of certain of their primary institutional activities -- publicizing governmental choices and highlighting possible abuses that otherwise might go undisputed and thus unchallenged. These investigations are the necessary prerequisites to the fundamental publicizing and mobilizing functions of these organizations. Access to information through FOIA is vital to their organizational missions." That is true in the instant matter as well.

Indeed, recent EPA assertions to undersigned in relation to various recent FOIA requests, both directly and through counsel reflecting its pique over the robustness of said FOIAing efforts (and subsequent, toned-down restatements of this acknowledgement), prove too much in the context of EPA now serially denying fee waiver requests, given that it reaffirms that CEI is precisely the sort of group the courts have identified in establishing this precedent.

Courts have noted FOIA's legislative history to find that a fee waiver request is likely to pass muster "if the information disclosed is new; supports public oversight of agency operations, including the quality of agency activities and the effects of agency policy or regulations on

public health or safety; or, otherwise confirms or clarifies data on past or present operations of the government." *McClellan Ecological Seepage Situation v. Carlucci*, 835 F.2d at 1284-1286.

This information request meets that description, for reasons both obvious and specified.

The subject matter of the requested records specifically concerns identifiable operations or activities of the government. The requested records directly relate to high-level promises by the President of the United States and the Attorney General to be "the most transparent administration, ever": is EPA properly maintaining an alternative to electronic mail on devices provided by EPA to senior officials exclusively for the performance of Agency duties, with extremely limited circumstantial exceptions permitted, which class of records has apparently never been produced by EPA in response to FOIA and congressional requests for "records" and/or "electronic records". This promise, in its serial incarnations, demanded and spawned widespread media coverage, and then of the reality of the administration's transparency efforts, and numerous transparency-oriented groups reporting on this performance, prompting further media and piublic interest (see, e.g., and internet search of "study Obama transparency").

Particularly after Requester's recent discoveries using FOIA, its publicizing certain EPA record-management and electronic communication practices and CEI's other efforts to disseminate the information, the public, media and congressional oversight bodies are very interested in how widespread are the violations of this pledge of unprecedented transparency.

This request, when satisfied, will further inform this ongoing public discussion.

We emphasize that **a Requester need not demonstrate that the records would contain any particular evidence, such as of misconduct.** Instead, the question is whether the requested

information is likely to contribute significantly to public understanding of the operations or activities of the government, period. *See Judicial Watch v. Rosotti*, 326 F. 3d 1309, 1314 (D.C. Cir 2003).

Potentially responsive records reflecting whether or not EPA has maintained and preserved text messages sent and received on Agency devices during periods when we are aware that the individual whose texting is at issue in this request was particularly active with her texting, and in a ways that we are informed led to internal cautions about the propriety of the texts, used unquestionably reflect "identifiable operations or activities of the government."

The Department of Justice Freedom of Information Act Guide expressly concedes that this threshold is easily met. There can be no question that this is such a case.

Disclosure is "likely to contribute" to an understanding of specific government operations or activities because the releasable material will be meaningfully informative in relation to the subject matter of the request. The disclosure of the requested records have an informative value and are "likely to contribute to an understanding of Federal government operations or activities" just as did various studies of public records reflecting on the administration's transparency, returned in the above-cited search "study obama transparency", and the public records themselves that were released to those groups, contributed to public understanding of specific government operations or activities: this issue is of significant and increasing public interest, in large part due to the administration's own promises and continuing claims, and revelations by outside groups accessing public records. To deny this and the substantial media and public interest, across the board from Fox News to PBS and The Atlantic,

would be arbitrary and capricious, as would be denial that shedding light on **this heretofore unexplored but important aspec**t of the issue would further and significantly inform the public.

However, **the Department of Justice's Freedom of Information Act Guide makes it clear that, in the DoJ's view, the "likely to contribute" determination hinges in substantial part on whether the requested documents provide information that is not already in the public domain.** There is no reasonable claim to deny that, to the extent the requested information is available in the public domain; these are forms obtained and held only by EPA. Further, however, **this aspect of the important public debate, of heretofore never produced text message records and related practices, has yet to be explored**. It is therefore clear that the requested records are "likely to contribute" to an understanding of your agency's decisions because they are not otherwise accessible other than through a FOIA request.

The disclosure will contribute to the understanding of the public at large, as opposed to the understanding of the requester or a narrow segment of interested persons. CEI intends to post these records for public scrutiny and otherwise to broadly disseminate the information it obtains under this request by the means described, herein. CEI has spent years promoting the public interest advocating sensible policies to protect human health and the environment, routinely receiving fee waivers under FOIA (until recently, but even then on appeal) for its ability to disseminate public information. Further, as demonstrated herein and in the above litany of exemplars of newsworthy FOIA activity, requester and particularly undersigned counsel have an established practice of utilizing FOIA to educate the public, lawmakers and news media about the government's operations and, in particular, have brought to

light important information about policies grounded in energy and environmental policy, like EPA's,[7] specifically in recent months relating to transparency and electronic record practices.

Requester intends to disseminate the information gathered by this request via media appearances (the undersigned appears regularly, to discuss his work, on national television and national and local radio shows, and weekly on the radio shows "Garrison" on WIBC Indianapolis and the nationally syndicated "Battle Line with Alan Nathan").

Requester also publishes materials based upon its research via print and electronic media, as well as in newsletters to legislators, education professionals, and other interested parties.[8] For a list of exemplar publications, please see http://cei.org/publications. Those activities are in fulfillment of CEI's mission. We intend to disseminate the information gathered by this request

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[7] In addition to the coverage of undersigned counsel's recent FOIA suit against EPA after learning of an order to perform no work on two requests also involving EPA relationships with key pressure groups, this involves EPA (see, e.g., http://washingtonexaminer.com/epa-refuses-to-talk-about-think-tank-suit-demanding-docs-on-officials-using-secret-emails/article/2509608#.UH7MRo50Ha4, referencing revelations in a memo obtained under FOIA; *Horner et al. (CEI) v. EPA* (CV-00-535 D.D.C., settled 2004)), see also CEI requests of the Departments of Treasury (see, e.g., http://www.cbsnews.com/8301-504383_162-5314040-504383.html, http://www.cbsnews.com/8301-504383_162-5322108-504383.html), and Energy (see, e.g., http://www.foxnews.com/scitech/2011/12/16/complicit-in-climategate-doe-under-fire/, http://news.investors.com/ibd-editorials/031210-527214-the-big-wind-power-cover-up.htm?p=2), and NOAA (see, e.g., http://wattsupwiththat.com/2012/10/04/the-secret-ipcc-stocker-wg1-memo-found/, http://wattsupwiththat.com/2012/08/21/noaa-releases-tranche-of-foia-documents-2-years-later/), NASA (See, e.g., http://legaltimes.typepad.com/blt/2010/11/global-warming-foia-suit-against-nasa-heats-up-again.html, which FOIA request and suit produced thousands of pages of emails reflecting agency resources used to run a third-party activist website, and revealing its data management practices; see also http://wattsupwiththat.com/2012/10/04/the-cyber-bonfire-of-gisss-vanities/), among others.

[8] *See EPIC v. DOD*, 241 F.Supp.2d 5 (D.D.C. 2003) (court ruled that the publisher of a bi-weekly electronic newsletter qualified as the media, entitling it to a waiver of fees on its FOIA request); *Forest Guardians v. U.S. Dept. of Interior*, 416 F.3d 1173, 1181-82 (10th Cir. 2005) (fee waiver granted for group that "aims to place the information on the Internet"; "Congress intended the courts to liberally construe the fee waiver requests of noncommercial entities").

to the public at large and at no cost through one or more of the following: (a) newsletters; (b) opinion pieces in newspapers or magazines; (c) CEI's websites, which receive approximately 150,000 monthly visitors (appx. 125,000 unique)(*See, e.g., www.openmarket.org,* one of several blogs operated by CEI providing daily coverage of legal and regulatory issues, and *www.globalwarming.org* (another CEI blog); (d) in-house publications for public dissemination; (e) other electronic journals, including blogs to which our professionals contribute; (f) local and syndicated radio programs dedicated to discussing public policy; (g) to the extent that Congress or states engaged in relevant oversight or related legislative or judicial activities find that which is received noteworthy, it will become part of the public record on deliberations of the legislative branches of the federal and state governments on the relevant issues.

CEI also is regularly cited in newspapers,[9] law reviews,[10] and legal and scholarly publications.[11]

More importantly, with a foundational, institutional interest in and reputation for its leading role in the relevant policy debates and expertise in the subject of transparency, energy- and environment-related regulatory policies CEI unquestionably has the "specialized knowledge" and "ability and intention" to disseminate the information requested in the broad manner, and to do so in a manner that contributes to the understanding of the "public-at-large."

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[9] *See, e.g.,* Al Neuharth, "Why Bail Out Bosses Who Messed It Up," *USA Today*, Nov. 21, 2008, at 23A (quotation from Competitive Enterprise Institute) (available at 2008 WLNR 22235170); Bill Shea, "Agency Looks Beyond Criticism of Ads of GM Boasting About Repaid Loan," *Crain's Detroit Business*, May 17, 2010, at 3 (available at 2010 WLNR 10415253); Mona Charen, Creators Syndicate, "You Might Suppose That President Obama Has His Hands ...," *Bismarck Tribune*, June 10, 2009, at A8 (syndicated columnist quoted CEI's OpenMarket blog); Hal Davis, "Earth's Temperature Is Rising and So Is Debate About It," *Dayton Daily News*, April 22, 2006, at A6 (citing CEI's GlobalWarming.Org); *Washington Examiner*, August 14, 2008, pg. 24, "Think-Tanking" (reprinting relevant commentary from OpenMarket); Mark Landsbaum, "Blogwatch: Biofuel Follies," *Orange County Register*, Nov. 13, 2007 (citing OpenMarket) (available in Westlaw news database at 2007 WLNR 23059349); *Pittsburgh Tribune-Review*, "Best of the Blogs," Oct. 7, 2007 (citing OpenMarket) (available in Westlaw news database at 2007 WLNR 19666326).

[10] *See, e.g.,* Robert Hardaway, "The Great American Housing Bubble," 35 *University of Dayton Law Review* 33, 34 (2009) (quoting Hans Bader of CEI regarding origins of the financial crisis that precipitated the TARP bailout program).

[11] *See, e.g.,* Bruce Yandle, "Bootleggers, Baptists, and the Global Warming Battle," 26 *Harvard Environmental Law Review* 177, 221 & fn. 272 (citing CEI's GlobalWarming.Org); Deepa Badrinarayana, "The Emerging Constitutional Challenge of Climate Change: India in Perspective," 19 *Fordham Environmental Law Review* 1, 22 & fn. 119 (2009) (same); Kim Diana Connolly, "Bridging the Divide: Examining the Role of the Public Trust in Protecting Coastal and Wetland Resources," 15 *Southeastern Environmental Law Journal* 1, 15 & fn. 127 (2006) (same); David Vanderzwaag, *et al.*, "The Arctic Environmental Protection Strategy, Arctic Council, and Multilateral Environmental Initiatives," 30 Denver Journal of International Law and Policy 131, 141 & fn. 79 (2002) (same); Bradley K. Krehely, "Government-Sponsored Enterprise: A Discussion of the Federal Subsidy of Fannie Mae and Freddie Mac, 6 North Carolina Banking Institute 519, 527 (2002) (quoting Competitive Enterprise Institute about potential bailouts in the future).

The disclosure will contribute "significantly" to public understanding of government operations or activities. *We repeat and incorporate here by reference the arguments above from the discussion of how disclosure is "likely to contribute" to an understanding of specific government operations or activities*.

After disclosure of these records, the public's understanding of this unexplored aspect of the now highly controversial claims of executive branch and administration transparency, and this heretofore unexplored but important aspect of the administration's electronic record practices (text message use and retention), will inherently be significantly enhanced. The requirement that disclosure must contribute "significantly" to the public understanding is therefore met.

As such, the Requester has stated "with reasonable specificity that its request pertains to operations of the government," and "the informative value of a request depends not on there being certainty of what the documents will reveal, but rather on the requesting party having explained with reasonable specificity how those documents would increase public knowledge of the functions of government." *Citizens for Responsibility & Ethics in Washington v. U.S. Dep't of Health and Human Services*, 481 F. Supp. 2d 99, 107-109 (D.D.C. 2006).

2) **Alternately, CEI qualifies as a media organization for purposes of fee waiver**

The provisions for determining whether a requesting party is a representative of the news media, and the "significant public interest" provision, are not mutually exclusive. Again, as CEI is a non-commercial requester, it is entitled to liberal construction of the fee waiver standards. 5 U.S.C.S. § 552(a)(4)(A)(iii), *Perkins v. U.S. Department of Veterans Affairs*. Alternately and only in the event EPA deviates from prior practice on similar requests and refuses to waive our

fees under the "significant public interest" test, which we will then appeal while requesting EPA proceed with processing on the grounds that we are a media organization, we request a waiver or limitation of processing fees pursuant to 5 U.S.C. § 552(a)(4)(A)(ii)("fees shall be limited to reasonable standard charges for document duplication when records are not sought for commercial use and the request is made by.... a representative of the news media...") and 40 C.F.R. §2.107(d)(1) ("No search or review fees will be charged for requests by educational institutions...or representatives of the news media."); see also 2.107(b)(6).

However, we note that as documents are requested and available electronically, there are no copying costs.

Requester repeats by reference the discussion as to its publishing practices, reach and intentions all in fulfillment of CEI's mission from pages 14-17, *supra*.

The information is of critical importance to the nonprofit policy advocacy groups engaged on these relevant issues, news media covering the issues, and others concerned with Agency activities in this controversial area, or as the Supreme Court once noted, what their government is up to.

For these reasons, Requester qualifies as a "representative[] of the news media" under the statutory definition, because it routinely gathers information of interest to the public, uses editorial skills to turn it into distinct work, and distributes that work to the pubic. *See Electronic Privacy Information Center v. Department of Defense*, 241 F. Supp. 2d 5 (D.D.C. 2003)(non-profit organization that gathered information and published it in newsletters and otherwise for general distribution qualified as representative of news media for purpose of limiting fees). Courts have reaffirmed that non-profit requesters who are not traditional news media outlets can

qualify as representatives of the new media for purposes of the FOIA, including after the 2007 amendments to FOIA. *See ACLU of Washington v. U.S. Dep't of Justice*, No. C09-0642RSL, 2011, 2011 U.S. Dist. LEXIS 26047 at *32 (W.D. Wash. Mar. 10, 2011). *See also Serv. Women's Action Network v. DOD*, 2012 U.S. Dist. Lexis 45292 (D. Conn., Mar. 30, 2012).

Accordingly, any fees charged must be limited to duplication costs. The records requested are available electronically and are requested in electronic format; as such, there are no duplication costs other than the cost of a compact disc(s).

CONCLUSION

We expect the agency to release within the statutory period of time all segregable portions of responsive records containing properly exempt information, and to provide information that may be withheld under FOIA's discretionary provisions and otherwise proceed with a bias toward disclosure, consistent with the law's clear intent, judicial precedent affirming this bias, and President Obama's directive to all federal agencies on January 26, 2009. Memo to the Heads of Exec. Offices and Agencies, Freedom of Information Act, 74 Fed. Reg. 4683 (Jan. 26, 2009) ("The Freedom of Information Act should be administered with a clear presumption: in the face of doubt, openness prevails. The Government should not keep information confidential merely because public officials might be embarrassed by disclosure, or because of speculative or abstract fears).

We expect this all aspects of this request be processed free from conflict of interest.

We request the agency provide particularized assurance that it is reviewing some quantity of records with an eye toward production on some estimated schedule, so as to establish some reasonable belief that it is processing our request. 5 U.S.C.A. § 552(a)(6)(A)(i). EPA must at

least to inform us of the scope of potentially responsive records, including the scope of the records it plans to produce and the scope of documents that it plans to withhold under any FOIA exemptions; FOIA specifically requires EPA to immediately notify CEI with a particularized and substantive determination, and of its determination and its reasoning, as well as CEI's right to appeal; further, FOIA's unusual circumstances safety valve to extend time to make a determination, and its exceptional circumstances safety valve providing additional time for a diligent agency to complete its review of records, indicate that responsive documents must be collected, examined, and reviewed in order to constitute a determination. *See Citizens for Responsible Ethics in Washington v. Federal Election Commission*, --- F.3d ----, 2013 WL 1296289 (C.A.D.C.), April 2, 2013. See also; *Muttitt v. U.S. Central Command*, 813 F. Supp. 2d 221; 2011 U.S. Dist. LEXIS 110396 at *14 (D.D.C. Sept. 28, 2011)(addressing "the statutory requirement that [agencies] provide estimated dates of completion").

We request a rolling production of records, such that the agency furnishes records to my attention as soon as they are identified, preferably electronically, but as needed then to my attention, at the address below.

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

Respectfully submitted,

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