



November 28, 2014

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U.S. DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
Office of the Chief Information Officer
High Performance Computing and Communications
NOAA Freedom of Information Officer
Public Reference Facility (SOU1000)
1315 East-West Highway (SSMC3)
Room 9719
Silver Spring, Maryland 20910

Attn: Mr. Bruce Gibbs
Mr. Gerald Fox
Ms. Wendy Schumacher

Re: Bruce Gibbs Email of 11/21/14
ITSSD Correspondence of 11/14/14
Modified FOIA Request No. DOC-NOAA-2014-001694
Tranche/Cache of Clearly and Obviously Identified NOAA Files

Dear Mr. Gibbs:

The nonprofit Institute for Trade, Standards and Sustainable Development (“ITSSD”) is in receipt of your email communication dated and transmitted on November 21, 2014, which apparently serves as a response to Gerard Fox’s undated, unsigned and letterhead-free draft correspondence entitled, “DOC-NOAA-2014-001694 – Fee Letter 11 12 2014.doc,” dispatched to ITSSD on November 12, 2014.

This ITSSD response to your November 21, 2014 email transmission and your forthcoming response to it (whether in email or letter correspondence form), as well as, Mr. Fox’s November 12, 2014 letter communication and ITSSD’s November 14, 2014 correspondence responding to it, are all properly considered part of the administrative record¹ and shall be referred to as such for FOIA Appeal purposes.

ITSSD still awaits, per its November 14 request, your detailed itemized breakdown of the \$4,000 estimate of FOIA fees Mr. Fox provided on November 12. Unfortunately, your brief November 21 response is insufficient to satisfy NOAA FOIA regulations² and/or to provide ITSSD with confidence of its accuracy (“Our current estimate is that it will take 98 hours to search for the documents you’ve requested, using professional labor at an average rate of \$41/hour”).

With all due respect, ITSSD has asked primarily only for digital reproduction of the explicitly identified contracts described in points 2-6 of its November 14, correspondence. ITSSD has not sought any underlying data. Consequently, we do not understand how it can take 98 hours to locate

and digitally reproduce these contracts, and thus, ITSSD, once again, requests a breakdown itemization to substantiate this OCIO estimate. ITSSD's lack of confidence in the accuracy of this estimate is all the more pertinent considering OCIO's initial fee estimate of \$7,500 to conduct a search for ALL files identified in the *entire* FOIA request.

Please be apprised that, contemporaneous with this correspondence, ITSSD is preparing a new Fee Waiver Request to accompany the agreed upon modification to ITSSD NOAA FOIA Request DOC-NOAA-2014-001694, as described in ITSSD's November 14 letter correspondence, which shall be filed with your offices by end of next week (Dec. 5, 2014).

We await your prompt acknowledgement and response via DOC-NOAA letter correspondence.

Very truly yours,

Lawrence A. Kogan

Lawrence A. Kogan
CEO
ITSSD

¹ See United States Department of Commerce, National Oceanic and Atmospheric Administration Office of General Counsel, *Memorandum Re: National Oceanic and Atmospheric Administration Guidelines for Compiling an Agency Administrative Record* (Dec. 21, 2012), at pp. 3-5, available at: http://www.gc.noaa.gov/documents/2012/AR_Guidelines_122112-Final.pdf (discussing *inter alia* how "Courts have [found] that the 'complete administrative record is not necessarily those documents that the agency has compiled and submitted as 'the' administrative record' but instead 'consists of all documents and materials directly or indirectly considered by agency decision-makers and includes evidence contrary to the agency's position.'")

² See United States Department of Justice, *Freedom of Information Act Guide* (May 2004), available at: http://www.justice.gov/oip/procereq.htm#N_79, quoting *Zemansky v. EPA*, 767 F.2d 569, 574 (9th Cir. 1985).