

ITSSD National Information Quality Act (IQA)-focused FOIA Education Campaign Summary

Seeking ‘HISA’ Peer Review Validation of EPA and Third Party-Developed and Peer Reviewed Scientific Assessments Supporting EPA’s Clean Air Act GHG Endangerment Findings (May 2013 – December 2014)

Since May 2013, the nonprofit Institute for Trade, Standards and Sustainable Development (“ITSSD”) has been engaged in a national education campaign to increase public awareness and understanding of the Information Quality Act and its indispensability to maintaining the quality of scientific assessments that federal agencies use as the basis for economically significant environmental, health and safety regulations and rulemakings. In particular, ITSSD chose to investigate the IQA compliance of the mostly third-party peer reviews performed by EPA and other federal agencies of the many non-EPA-developed scientific assessments supporting EPA’s 2009 Clean Air Act Section 202(a) Greenhouse Gas (“GHG”) Endangerment Findings because of the rich factual record and the clearness of IQA standards applicable to “highly influential scientific assessments” (“HISAs”).

ITSSD Use of the U.S. Supreme Court and FOIA Administrative Venues

ITSSD’s education campaign has utilized both judicial and administrative venues to convey to the public what it has steadily learned about EPA’s Clean Air Act-related IQA practices. Although ITSSD’s ability, as an amicus party, to disseminate such information was quite limited, it appears to have since attracted the attention of conservative SCOTUS justices. Clearly, ITSSD has been more successful sharing with the public its research findings concerning the IQA noncompliance of EPA and NOAA peer reviews of agency-developed climate assessments supporting EPA’s endangerment findings vis-à-vis the several Freedom of Information Act (“FOIA”) requests it has filed with these agencies. However, it also is fairly obvious that EPA and NOAA, with likely White House direction, have successfully obstructed ITSSD’s efforts to use the FOIA process to compel EPA and NOAA transparency and accountability on these issues, in contravention of the statute’s unequivocal intent. Yet, this is likely to change once ITSSD seeks judicial recourse.

1. ITSSD’s Filing of an IQA-focused Amicus Curiae Brief

On May 24, 2013, ITSSD filed an *amicus curiae* brief with the United States Supreme Court in the case of *Chamber of Commerce of the United States of America v. Environmental Protection Agency*, one of many cases the District of Columbia Court of Appeals had consolidated with the case of *Coalition for Responsible Regulation v. Environmental Protection Agency*,¹ in which industry had challenged EPA’s endangerment findings under provisions of the Clean Air Act. The IQA-focused ITSSD brief argued, indirectly in support of the State of Virginia’s brief,² that EPA had acted arbitrarily and capriciously by failing to ensure that the peer review processes employed to validate the mostly third party-developed scientific assessments”

(“HISAs”) prepared by federal agencies under the auspices of the United States Global Change Research Program/Climate Change Science Program (“USGCRP/CCSP”), by the National Research Council (“NRC”), and by the Intergovernmental Panel on Climate Change (“IPCC”), upon which the Administrator’s Final Endangerment Findings and subsequent auto tailpipe emissions regulations had primarily relied, satisfied Information Quality Act (“IQA”) and applicable IQA-implementing agency guidelines requirements. The brief focused on EPA’s noncompliance with IQA and OMB/EPA guideline standards applicable to third party-developed HISA/ISI that EPA publicly disseminated as support for its CAA endangerment findings, and upon EPA’s inappropriate treatment of stakeholder-filed IQA requests for correction as comments received incident to an Administrative Procedure Act notice and comment procedure. The U.S. Supreme Court ultimately decided not to grant cert on the IQA issue.³

2. ITSSD’s Engagement in an IQA-Focused Federal Agency FOIA Process

a. ITSSD’s First Wave of IQA-focused FOIA Request Filings

During March 2014, ITSSD, a first-time FOIA filer, filed by physical and electronic means, detailed Freedom of Information Act (“FOIA”) requests with the national and regional FOIA offices of EPA⁴ and NOAA,⁵ respectively, seeking disclosure of agency records substantiating how each agency’s peer review of HISAs they developed and publicly disseminated as support for EPA’s CAA Endangerment Findings satisfied the IQA’s rigorous and least discretionary substantive and procedural peer review standards. Although these FOIAs did not specify the names of the many specific peer review files sought (because they were not known), they did identify in detail the subject matter of those files, the names of agencies and third party entities involved in the peer review process, and the six-year period (January 1, 2005 through December 31, 2011) during which the identified peer review files would have been prepared and disseminated. In addition, they contained supplementary ITSSD research and analyses of the facts surrounding the development of the records for which disclosure was sought and each agency’s IQA compliance to-date, based on then current publicly available evidence. The research and analyses were intended to educate the public about the complex facts surrounding the peer review processes employed by these agencies to validate the assessments supporting EPA’s CAA endangerment finding. Each of these FOIA requests also incorporated requests for FOIA fee waivers.

i. FOIA Request No. EPA-HQ-2014-004938

EPA’s National FOIA Office (Office of Environmental Information – (“OEI”)) denied ITSSD’s fee waiver request on March 27, 2014, solely on the grounds that ITSSD had not “expressed a specific intent to disseminate the information to the general public.”⁶ Thereafter, on April 1, 2014, EPA’s Office of Air and Radiation (“OAR”) responded to ITSSD’s FOIA request by claiming that it did “not reasonably describe the records [it was] seeking in a way that [would] permit EPA employees to identify and locate them.”⁷ These EPA responses prompted ITSSD, in good faith, to prepare detailed annotated clarifications of both its FOIA request and FOIA fee waiver request which were subsequently filed on April 28, 2014.⁸

On May 6, 2014, EPA-OEI denied ITSSD's clarified FOIA fee waiver request on the same basis as it did previously.⁹ EPA-OIA also denied, in a separate correspondence of the same date, ITSSD's request for status as an "educational institution" under applicable EPA FOIA regulations, with the consequence that ITSSD would be placed in the "other" fee category and "charged for the costs of search time, and duplication, excluding the first two hours of search time and the first 100 pages of duplication."¹⁰ On May 8, 2014, in an email correspondence directed to ITSSD, EPA-OAR stated, once again, for the same reasons, that ITSSD's "April 28 clarification to FOIA request EPA-HQ-2014-004938 [like its March 21, 2014 FOIA request,] does not reasonably describe the records you are seeking in a way that will permit EPA employees to identify and locate them." EPA-OAR also requested, once again, that ITSSD clarify its request, offered ITSSD the opportunity to schedule a meeting to discuss how to undertake such a clarification, and imposed on ITSSD a seven calendar-day response deadline.¹¹ ITSSD promptly responded to said correspondence on May 9, 2014, in an effort to provide the further clarification sought and to schedule a meeting with EPA-OAR personnel¹² on one or more alternate days during the following week; EPA-OAR personnel subsequently balked and indicated such a meeting was unnecessary.¹³

On May 15, 2014, as a sign of good faith, ITSSD filed with EPA-OAR yet another detailed annotated FOIA request clarification.¹⁴ Thereafter, on May 27, 2014, ITSSD participated in a conference phone call with two representatives from EPA-OAR and a representative from EPA's Office of General Counsel ("EPA-OGC"). During the call, the purpose of which was to clarify EPA's confusion concerning the scope and focus of the outstanding ITSSD FOIA request, these EPA personnel indicated that EPA would not respond to ITSSD's FOIA request, even as clarified, and suggested that if ITSSD desired a response, at all, it would need to withdraw the current request and replace it with a newly filed FOIA request.¹⁵

ii. FOIA Request No. DOC-NOAA-2014-000714

NOAA's National FOIA Office (Office of the Chief Information Officer High Performance Computing and Communications ("OCIO")) denied ITSSD's FOIA fee waiver request on the grounds that it did not sufficiently "explain in detail how disclosure of the records requested would satisfy all the requirements for a fee waiver." NOAA-OCIO also had sought clarification of such request by April 22.¹⁶

In response, on May 5, 2014, ITSSD filed with NOAA-OCIO a detailed annotated FOIA request clarification¹⁷ and an annotated clarified FOIA fee waiver request.¹⁸ On May 28, 2014, without having responded to the ITSSD's FOIA request, NOAA-OCIO denied ITSSD's clarified fee waiver request on multiple grounds. It reasoned that the clarified fee waiver request did "not show that [ITSSD] would significantly advance the public understanding of a specific government operation or activity." In addition, NOAA-OCIO reasoned that the clarified fee waiver request had "not expressed a distribution plan with details about which websites will distribute the records, if any, to the general public or publication where [ITSSD] staff and Board of Advisor members have written commitments to publish the information that would then be accessible to the general public."¹⁹

Thereafter, on June 12, 2014, ITSSD participated in a conference phone call with a representative from NOAA-OCIO and a representative from NOAA's Office of General Counsel ("NOAA-OGC"). The purpose the call was to address NOAA apparent confusion(s) concerning the scope and focus of current ITSSD FOIA Request No. NOAA-HQ-2014-000714, particularly, its relevance to the FOIA requests and clarifications ITSSD had then filed with the EPA. During the call, these NOAA personnel indicated that NOAA would not respond to ITSSD's FOIA request, even as clarified, and suggested that if ITSSD desired a response, at all, it would need to withdraw the current request and replace it with a newly filed FOIA request.²⁰

Between May 22, 2014 and June 21, 2014, ITSSD reported about its IQA-focused FOIA efforts,²¹ as did a fair number of media²² and scholarly sources.²³

b. ITSSD's Second Wave of IQA-focused FOIA Request Filings

i. FOIA Request EPA-HQ-2014-008026

Consistent with the agreement reached during ITSSD's May 27, 2014 conference call with EPA-OEI and OGC personnel, ITSSD prepared and filed a new 145-page detailed and heavily annotated FOIA request²⁴ and FOIA fee waiver request²⁵ with EPA on June 30, 2014, and simultaneously withdrew its previously filed FOIA and fee waiver requests and clarifications at such time. This new FOIA request sought disclosure of "climate science-related peer review files substantiating the IQA compliance of twenty-eight (28) EPA and other federal agency, NRC and IPCC-developed and EPA and third party-peer reviewed "highly influential scientific assessments" ("HISAs") that EPA primarily relied upon as scientific support for its CAA GHG Endangerment Findings. This new FOIA request was significant because it identified and described in granular detail in text and annotations four different categories of specific agency records ("EPA climate science-related peer review files") for which public disclosure was sought. In addition, the accompanying annotated addendum analyzed and explained how these four categories of records related to the four levels of IQA compliance obligations to which EPA had been subject in order to validate those HISAs. ITSSD reported²⁶ about its newly filed EPA FOIA request which also received a fair amount of media²⁷ and scholarly attention.²⁸

On July 15, 2014, EPA-OEI denied ITSSD's request for a fee waiver on the sole grounds that it had "not expressed a specific intent to disseminate the information to the general public." EPA issued its denial on this basis even though ITSSD's FOIA fee waiver request had provided sufficient evidence of ITSSD's intent and capabilities to disseminate the records requested upon disclosure by EPA to a broad public audience. Notwithstanding, ITSSD addressing each of the six fee waiver factors set forth in applicable EPA FOIA regulations, EPA-OEI's denial did not address any of the other five factors.²⁹

On July 22, 2014, EPA-OAR responded to ITSSD's FOIA request by stating that it did "not reasonably describe the records [ITSSD] is seeking in a way that will permit EPA employees to identify and locate them. [...] Given the content of this FOIA request and FOIA request EPA-HQ-2014-004938's clarifications, we would like to kindly request that you clarify your request in a simple manner that would allow us to provide a response."³⁰ Rather than respond to the FOIA request as drafted, EPA-OAR recommended that ITSSD either narrow the FOIA request's

scope to that of the general language contained in its preambular paragraph, or provide further clarification in order for EPA to begin processing the request. EPA-OAR also imposed on ITSSD another seven calendar-day response deadline.³¹

ITSSD prepared and filed a clarification of its new FOIA request on July 25, 2014, that once again, emphasized the four distinct categories of agency records for which public disclosure was sought and the four corresponding levels of IQA legal compliance obligations.³² In response, on August 1, 2014, EPA-OAR dispatched an assurance letter seeking ITSSD's assurance of payment of the estimated \$27,020 search fee EPA-OAR had calculated to process ITSSD's FOIA request 'as-is.' Alternatively, ITSSD was offered the opportunity to tender payment assurance with respect to one-of-three different FOIA *search* fees options corresponding to one-of-three selected records disclosure options provided. Needless to say, the scope of the records to be disclosed pursuant to each of the four alternatives was narrower than the scope of ITSSD's FOIA request 'as-is,' which was reflected in the relatively lower estimated search fees assessed in connection with each such option, which ranged from \$3,880 to \$9,700.³³

ITSSD responded to EPA-OAR's payment assurance letter on August 7, 2014. It requested an itemization/breakdown, in accordance with applicable EPA FOIA regulations, of each of the four estimated search fees assessed, and a clarification that the request for written assurance of payment was in lieu of prepayment of search fees.³⁴ On August 15, 2014, EPA-OAR provided that breakdown. It reflected that a full search for "all potentially responsive" EPA documents (in response to ITSSD's FOIA request 'as-is') requiring four (4) managers working a total of one hundred forty (140) hours at a rate of \$41/hour at a total cost of \$5,740, and thirty-two (32) professional staff working a total of seven hundred-sixty (760) hours at a rate of \$28/hour at a cost of \$21,280, would take a total of twelve months' time at a total project search cost of \$27,020, plus a \$100 document duplication fee. Remarkably, a similar search for "all potentially responsive" EPA documents undertaken only by two (2) managers working a total of one hundred (100) hours at a rate of \$41/hour at a total cost of \$4,100, and four (4) professional staff working a total of two hundred hours at a rate of \$28/hour at a cost of \$5,600, would take a total of ten (10) months' time at a total project search cost of \$9,700, plus a \$100 document duplication fee.³⁵ How could it take only two fewer months for six persons to do the work of thirty-six persons at a cost that is \$17,320 lower?

On August 15, 2014, ITSSD Appeals EPA-OEI's July 15, 2014 denial of its FOIA fee waiver request.³⁶ On September 16, 2014, ITSSD informed EPA-OGC that it would file a new FOIA request with NOAA, and requested that EPA withhold its determination until the time of that filing. ITSSD explained that the NOAA FOIA was "material and relevant" to the EPA fee waiver determination because "it provide[d] further support for ITSSD's discussion of how its EPA FOIA Request satisfies factors 1, 2, and 4 of the six-factor fee waiver test." EPA-OGC agreed, on the same day, to postpone its determination until it had the opportunity to review ITSSD's new NOAA FOIA request. ITSSD filed its new FOIA request with NOAA on September 22, 2014, and provided EPA-OGC with a weblink to such document later in the day.³⁷ On October 16, EPA-OGC upheld EPA-OEI's denial of ITSSD's FOIA request.³⁸ It first concluded that ITSSD was an advocacy organization rather than an "educational institution." It then concluded that ITSSD had failed to demonstrate how disclosure of the information requested in ITSSD's new FOIA request is likely to 'substantially' contribute to the public's

understanding of how EPA's scientific peer review operations and activities ensure, the 'quality, integrity, and reliability' of EPA-developed or internal or external HISAs supporting the EPA Endangerment Finding and how EPA fulfilled the alleged four levels of legal obligations imposed by the IQA and OMB and EPA IQA-implementing guidelines."³⁹ In reaching this determination, EPA-OGC overlooked much of ITSSD's documented information.

ii. FOIA Request No. DOC-NOAA-2014-001694

On September 22, 2014, consistent with the agreement ITSSD reached with NOAA OCIO- and NOAA-OGC personnel during a June 12, 2014 conference call, ITSSD filed a new very detailed and heavily annotated 247-page FOIA request⁴⁰ and FOIA fee waiver request,⁴¹ and simultaneously withdrew its previously filed FOIA and fee waiver requests and clarifications. This new FOIA sought disclosure of climate science-related peer review files substantiating the IQA compliance of ten (10) NOAA-developed and mostly third party-peer reviewed HISAs that EPA used as primary scientific support for its CAA GHG Endangerment Findings and subsequently enacted EPA GHG emissions regulations. The FOIA request was significant insofar as it clearly identified how seven NOAA-developed HISAs peer reviewed by the National Research Council of the National Academy of Sciences, as well as, three other NOAA-developed HISAs and ISI peer reviewed by the USGCRP and NOAA, had failed to satisfy applicable IQA peer reviewer independence/impartiality and conflict-of-interest standards. ITSSD, once again, reported about its newly filed FOIA request⁴² and said request attracted industry media attention.⁴³

On September 30, 2014, ITSSD filed a supplement to its September 22, 2014 fee waiver request, setting forth additional sources that had reported about ITSSD's new FOIA request filing.⁴⁴ On the same day, NOAA Office of Oceanic and Atmospheric Research ("NOAA-OAR") responded with an obtuse request for further clarification, warning that unless ITSSD responded in seven-days' time with information that "described [...] the records requested [...] in enough detail to enable Department personnel to locate them with a reasonable effort," NOAA would "assume [ITSSD is] no longer interested in pursuing [its] request and [NOAA would] close [ITSSD's] request from [its] file."⁴⁵ ITSSD responded the very next day with an elaborate clarification of the specific NOAA files for which FOIA disclosure was sought.⁴⁶

On October 10, 2014, NOAA denied, without explanation, ITSSD's new FOIA-related fee waiver request.⁴⁷ It "concluded that "[ITSSD's] fee waiver justification was insufficient in detail to enable [NOAA-OCIO] to grant [ITSSD's] fee waiver request," and that notwithstanding ITSSD's filing of a FOIA clarification on October 1, 2014, "NOAA [was] still without clarity and information required to grant [ITSSD] a fee waiver." NOAA directed ITSSD to file an appeal if it wished to contest the agency's determination.⁴⁸ ITSSD responded to NOAA-OCIO by telephone on October 21, 2014. Said phone discussion yielded a verbal agreement whereby ITSSD would aid NOAA-OCIO's efforts in performing a good faith search for agency records identified for disclosure in FOIA request No. DOC-NOAA-2014-001694 [by...] separat[ing those requested records] into two tranches/caches. The first tranche/cache would "consist of those documents in said FOIA request that already provide clear and obvious identification of documents for which immediate uncensored disclosure is sought." The second tranche/cache would "consist of documents in said FOIA request which are not as clearly identified by name,

but rather, by subject matter and issue, and which would require further iterative discussion between NOAA and ITSSD to reach a higher level of clarification.”⁴⁹

ITSSD thereafter confirmed this verbal agreement in an October 27, 2014 correspondence setting forth the first tranche/cache of documents. The correspondence itemized two sets of contracts. The first set of contracts consisted of climate science research-related grant contracts identified specifically by number that NOAA had issued to no fewer than sixteen (16) universities NOAA had selected to establish, maintain or reorganize NOAA Cooperative Institute (“CI”) Programs. The second set of contracts were peer review contracts that NOAA and other federal agencies had issued to the National Research Council/National Academy of Sciences (NRC/NAS) to perform peer reviews of seven NOAA-developed climate science-related HISAs.⁵⁰ EPA ultimately relied upon these HISAs as partial support for its 2009 CAA GHG Endangerment Findings. On November 7, 2014, NOAA OAR and OCIO personnel had acknowledged and accepted receipt of the October 27 filing.⁵¹ Subsequently, on November 12, NOAA-OCIO personnel dispatched via email an undated, unsigned and letterhead-free FOIA fee estimate in the amount of \$4,000 to conduct a search for the specifically identified NOAA CI Program climate science research-related grant contracts and NRC/NAS peer review contracts.⁵² In its November 14, 2014 response to this estimate, ITSSD, once again, clearly identified the specific types of contracts for which it seeks disclosure under FOIA. It also requested a detailed itemized breakdown of the \$4,000 FOIA fee estimate, and expressed surprise that said estimate had been more than fifty percent (50%) of the total search fee estimate for ALL documents for which ITSSD had previously sought Agency disclosure in its September 22, 2014 FOIA request.⁵³

NOAA OAR and OCIO answered ITSSD’s response on November 21, 2014. It sought confirmation by November 28, 2014 of whether ITSSD would pay the quoted FOIA fee estimate, and justified the estimate by stating that, “[p]lease remember *you have requested a fair amount of data, that's still somewhat vague in some areas--but we will try to help you to the best of our ability*” (emphasis added).⁵⁴ In its November 28, 2014 response, ITSSD emphasized that it had not requested data, but merely contracts. It also notified NOAA OAR and OCIO that it would file, by December 5, 2014, a new Fee Waiver Request corresponding to the first tranche/cache of documents (contracts) specifically identified and clarified, in its October 27, 2014 and November 14, 2014 correspondences.⁵⁵ On December 5, 2014, ITSSD filed its new Fee Waiver Request as it had previously indicated.⁵⁶ In its December 5, 2014 acknowledgement of receipt of said Fee Waiver Request, NOAA OAR and OCIO stated the following: “Thanks a lot for providing your fee waiver appeal...I will provide you a detailed estimate for the first part of your request next week...*The more we learn about what you're requesting, the number of hours are escalating*” (emphasis added).⁵⁷ Thereafter, on December 11, 2014, NOAA OCIO issued its denial of ITSSD’s FOIA Fee Waiver Request relating to the first tranche/cache of documents noted above, again, without explanation.⁵⁸

ENDNOTES

¹ See *Coalition for Responsible Regulation v. Environmental Protection Agency*, Docket No. 12-1272 (May 24, 2013), cert. denied, Oct. 15, 2013, available at: <http://sblog.s3.amazonaws.com/wp-content/uploads/2013/07/ITSSD-Amicus-Brief-in-Support-of-Certiorari-Chamber-of-Commerce-et-al.-v.-EPA-U.S.-Supreme-Court.pdf>; <http://www.scotusblog.com/case-files/cases/chamber-of-commerce-of-the-united-states-v-environmental-protection-agency/>.

² See *Commonwealth of Virginia v. Environmental Protection Agency, On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The District Of Columbia Circuit* Case, No. 12-1152 (March 20, 2013), at pp. 19-26, available at: <http://sblog.s3.amazonaws.com/wp-content/uploads/2013/08/Va.-v.-EPA-Cert-Petition-Ct.-filed-3-20-13.pdf> (“D. The EPA’s Reasons for Relying on the IPCC Were Undermined by the Climategate Data Provided in the Reconsideration Petitions which Data Compel the Conclusion that the Endangerment Finding *Fails to meet essential Information Quality Standards* such that Reconsideration Is Required”) (emphasis added). *Id.*

³ *Id.* (“Petition for certiorari denied on October 15, 2013”).

⁴ See Institute for Trade, Standards and Sustainable Development, *FOIA Request No. EPA-HQ-2014-004938* (filed March 21, 2014), available at: <https://nebula.wsimg.com/082c300589af39a59e396ea11703d13a?AccessKeyId=39A2DC689E4CA87C906D&disposition=0&alloworigin=1> (This FOIA request was originally filed as ten separate FOIA requests with EPA-HQ and nine EPA regions, but was immediately consolidated by EPA’s Office of Air and Radiation on April 1, 2014). See United States Environmental Protection Agency, Office of Air and Radiation, *Freedom of Information Act Request No. EPA-HQ-2014-004938* (April 1, 2014), available at: <https://nebula.wsimg.com/8d8aa120746d530d075c6b4e689d2961?AccessKeyId=39A2DC689E4CA87C906D&disposition=0&alloworigin=1>.

⁵ See Institute for Trade, Standards and Sustainable Development, *FOIA Request No. DOC-NOAA-2014-000714* (filed March 26, 2014), available at: <https://nebula.wsimg.com/1ec660f37bd6e62a136dbf64b95ff247?AccessKeyId=39A2DC689E4CA87C906D&disposition=0&alloworigin=1> (This FOIA request was originally filed as seven separate FOIA requests with NOAA-HQ and six NOAA Collaboration Team offices, but was immediately consolidated by NOAA-HQ as of April 1, 2014). See U.S. Department of Commerce, National Oceanic and Atmospheric Administration Office of the Chief Information Officer, High Performance Computing and Communications, *Re: FOIA Request No. DOC-NOAA-2014-000714* (April 1, 2014), available at: <https://nebula.wsimg.com/37bd0311492047e8e8a9a6cf331122b0?AccessKeyId=39A2DC689E4CA87C906D&disposition=0&alloworigin=1>.

⁶ See United States Environmental Protection Agency Office of Environmental Information, *RE: Request Numbers: HQ-2014-004938; R3-2014-004862; R5-2014-04881; R6-2014-005004; R8-2014-004910 and R10-2014-004857* (March 27), available at: <https://nebula.wsimg.com/6c99d51e6f75e4597f3a0bfe16012896?AccessKeyId=39A2DC689E4CA87C906D&disposition=0&alloworigin=1>.

⁷ See United States Environmental Protection Agency, Office of Air and Radiation, *Freedom of Information Act Request No. EPA-HQ-2014-004938* (April 1, 2014), *supra*.

⁸ See Institute for Trade, Standards and Sustainable Development, *ITSSD FOIA Request Clarification FOIA (Consolidated) Request No. EPA-HQ-2014-004938* (April 28, 2014), available at: <https://nebula.wsimg.com/33da6f79b3db7f61ddb60acab86fed80?AccessKeyId=39A2DC689E4CA87C906D&disposition=0&alloworigin=1>. See also Institute for Trade, Standards and Sustainable Development, *ITSSD FOIA Fee Waiver Request Clarification FOIA (Consolidated) Request No. EPA-HQ-2014-004938* (April 28, 2014), available at: <https://nebula.wsimg.com/b6699885fdfe52abadc02e74efe88f10?AccessKeyId=39A2DC689E4CA87C906D&disposition=0&alloworigin=1>.

⁹ See United States Environmental Protection Agency Office of Environmental Information, *RE: Request Number: EPA-HQ-2014-004938 [Clarified Fee Waiver Request Denial]* (May 6, 2014), available at: <https://nebula.wsimg.com/dbc68fde60747892a4fb851272a6fb8c?AccessKeyId=39A2DC689E4CA87C906D&disposition=0&alloworigin=1>.

¹⁰ See United States Environmental Protection Agency Office of Environmental Information, *RE: Request Number: EPA-HQ-2014-004938 [Denial of Request for Educational Organization Status]* (May 6, 2014), available at: <https://nebula.wsimg.com/1db0c132040b80593765da2b209e3db7?AccessKeyId=39A2DC689E4CA87C906D&disposition=0&alloworigin=1>.

¹¹ See Institute for Trade, Standards and Sustainable Development, *Email Correspondence Dated May 8, 2014 From Dana Hyland, EPA Office of Air and Radiation To Lawrence Kogan, ITSSD*, available at: <https://nebula.wsimg.com/da67710568aceea472bd64141b5001d1?AccessKeyId=39A2DC689E4CA87C906D&disposition=0&alloworigin=1>.

¹² See Institute for Trade, Standards and Sustainable Development, *ITSSD FOIA Request Clarification; FOIA Fee Waiver Request Clarification FOIA (Consolidated) Request No. EPA-HQ-2014-004938* (May 9, 2014), available at: <https://nebula.wsimg.com/177229e10ccacafba1e1e180447f26c5?AccessKeyId=39A2DC689E4CA87C906D&disposition=0&alloworigin=1>.

¹³ See Institute for Trade, Standards and Sustainable Development, *Email Correspondences Dated May 12-13, 2014 From Dana Hyland, EPA Office of Air and Radiation To Lawrence Kogan, ITSSD*, available at: <https://nebula.wsimg.com/bf5a2dbdeae27b2ad185bf92dbeedd6f?AccessKeyId=39A2DC689E4CA87C906D&disposition=0&alloworigin=1>.

¹⁴ See Institute for Trade, Standards and Sustainable Development, *Re: Second ITSSD FOIA Request Clarification* (May 15, 2014), available at: <https://nebula.wsimg.com/43574caf2ab99de885c84749c3ad9411?AccessKeyId=39A2DC689E4CA87C906D&disposition=0&alloworigin=1>.

¹⁵ This conference call had been recorded in accordance with New Jersey state privacy laws.

¹⁶ See U.S. Department of Commerce, National Oceanic and Atmospheric Administration Office of the Chief Information Officer, High Performance Computing and Communications, *Re: FOIA Request No. DOC-NOAA-2014-000714* (April 1, 2014), *supra*.

¹⁷ See Institute for Trade, Standards and Sustainable Development, *ITSSD FOIA Request Clarification - Consolidated FOIA Request No. DOC-NOAA-2014-000714* (May 5, 2014), available at: <https://nebula.wsimg.com/c25e625aa81981536c980ec0f3307791?AccessKeyId=39A2DC689E4CA87C906D&disposition=0&alloworigin=1>.

¹⁸ See Institute for Trade, Standards and Sustainable Development, *ITSSD FOIA Fee Waiver Request Clarification Consolidated FOIA Request No. DOC-NOAA-2014-000714* (May 5, 2014), available at: <https://nebula.wsimg.com/8a36cc18e5e7c578018f7a8cf851766d?AccessKeyId=39A2DC689E4CA87C906D&disposition=0&alloworigin=1>.

¹⁹ See U.S. Department of Commerce, National Oceanic and Atmospheric Administration Office of the Chief Information Officer, High Performance Computing and Communications, *Re: FOIA Request No. DOC-NOAA-2014-000714* (May 28, 2014), available at: <https://nebula.wsimg.com/8b680576f0c313e223b87bf7c85995fa?AccessKeyId=39A2DC689E4CA87C906D&disposition=0&alloworigin=1>.

²⁰ This conference call had been recorded in accordance with New Jersey state privacy laws.

²¹ See Institute for Trade, Standards and Sustainable Development, *ITSSD Embarks on Public "Education Campaign" To Ensure Federal Agency Peer Review Science Processes Used to Vet Climate Assessments Supporting EPA's 2009 Greenhouse Gas Endangerment Findings Met Information Quality Act Requirements*, Press Release (May 22, 2014), available at:

<https://nebula.wsimg.com/7e6107fef9a0b6b382e80e921b213c65?AccessKeyId=39A2DC689E4CA87C906D&disposition=0&alloworigin=1>; Lawrence A. Kogan and Richard D. Otis Jr., *Keeping Junk Science at Bay on Global Warming*, Washington Times (May 29, 2014), available at:

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³⁸ In other words, EPA denied ITSSD's Appeal of EPA-OEI's denial of ITSSD's fee waiver request.

³⁹ *Id.*, at pp. 6-7.

⁴⁰ See Institute for Trade, Standards and Sustainable Development, *Filing of New ITSSD FOIA Request [FOIA Request No. DOC-NOAA-2014-001694]; Withdrawal of FOIA Request No. DOC-NOAA-2014-000714*, available at: <https://nebula.wsimg.com/86e0c3d9f0c18e77b33e25d935498bcc?AccessKeyId=39A2DC689E4CA87C906D&disposition=0&alloworigin=1>.

⁴¹ See Institute for Trade, Standards and Sustainable Development, *Filing of New FOIA Fee Waiver Request [FOIA Request No. DOC-NOAA-2014-001694] to Accompany New FOIA Request; Withdrawal of Fee Waiver Request Relating to Withdrawn FOIA Request No. DOC-NOAA-2014-000714* (Sept. 22, 2014), available at: <https://nebula.wsimg.com/f05a58d9e07c072567b5ba64b612b984?AccessKeyId=39A2DC689E4CA87C906D&disposition=0&alloworigin=1>.

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⁴⁶ See Institute for Trade, Standards and Sustainable Development, *Clarification of New FOIA Request No. DOC-NOAA-2014-001694* (Oct. 1, 2014), available at: <https://nebula.wsimg.com/43d251976355e191bb523611a8fd1cd2?AccessKeyId=39A2DC689E4CA87C906D&disposition=0&alloworigin=1>.

⁴⁷ See United States Department of Commerce National Oceanic and Atmospheric Administration, Office of the Chief Information Officer High Performance Computing and Communications, *Re: FOIA Request No. DOC-NOAA-2014-001694* (Oct. 10, 2014), available at: <https://nebula.wsimg.com/31e7bfa1e15c1162c804285d7b5e8140?AccessKeyId=39A2DC689E4CA87C906D&disposition=0&alloworigin=1>.

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⁴⁹ See Institute for Trade, Standards and Sustainable Development, *FOIA Request No. DOC-NOAA-2014-001694 - Tranche/Cache of Clearly and Obviously Identified NOAA Files* (Oct. 27, 2014), available at: <https://nebula.wsimg.com/27e342084d64f57315a79f9a426c9800?AccessKeyId=39A2DC689E4CA87C906D&disposition=0&alloworigin=1>.

⁵⁰ *Id.*

⁵¹ See *DOC-NOAA Email Acceptance of ITSSD Amendment/Modification/Bifurcation of FOIA Request No. DOC-NOAA-2014-001694* (Nov. 7, 2014) available at: <https://nebula.wsimg.com/49d9ddec8309db3a37024d77c7b6d781?AccessKeyId=39A2DC689E4CA87C906D&disposition=0&alloworigin=1>.

⁵² See *DOC-NOAA Undated, Unsigned and Letterhead-Free FOIA Fee Estimate Transmitted via Email Dated November 12, 2014*, (Nov. 12, 2014), available at: <https://nebula.wsimg.com/05f5d2f53b3f56b30fed851d96020157?AccessKeyId=39A2DC689E4CA87C906D&disposition=0&alloworigin=1> and <https://nebula.wsimg.com/789568e994112ab08c9be9ce348e5302?AccessKeyId=39A2DC689E4CA87C906D&disposition=0&alloworigin=1>.

⁵³ See Institute for Trade, Standards and Sustainable Development, *ITSSD Reply to DOC-NOAA Undated, Unsigned and Letterhead-Free Fee Estimate Transmitted via Email Dated November 12, 2014* (Nov. 14, 2014), available at: <https://nebula.wsimg.com/03611f04fa470c17705a07ef2838bacf?AccessKeyId=39A2DC689E4CA87C906D&disposition=0&alloworigin=1>.

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⁵⁵ See Institute for Trade, Standards and Sustainable Development, *ITSSD Reply of November 28, 2014, to DOC-NOAA Response via Email Dated November 21, 2014, Re: Amended/Modified/Bifurcated FOIA Request No. DOC-NOAA-2014-001694* (Nov. 28, 2014), available at: <https://nebula.wsimg.com/a3a245a8380ed13a3ac68c8d42439f36?AccessKeyId=39A2DC689E4CA87C906D&disposition=0&alloworigin=1>.

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