

**Email Correspondence Dated May 8, 2014**  
**From Dana Hyland, EPA Office of Air and Radiation**  
**To Lawrence Kogan, ITSSD**

Print Previous Next

**FOIA Agency Response...** > Message Detail

Entire thread

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**Subject:** EPA-HQ-2014-004938

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**From:** "Hyland, Dana" <[Hyland.Dana@epa.gov](mailto:Hyland.Dana@epa.gov)> ([Add as Preferred Sender](#))  
**Date:** Thu, May 08, 2014 5:17 pm  
**To:** "lkogan@itssd.org" <[lkogan@itssd.org](mailto:lkogan@itssd.org)>

Dear Mr. Kogan,

On March 21, 2014, the U.S. Environmental Protection Agency (EPA or Agency) received your 20-page FOIA request on FOIAonline. Broadly speaking, your FOIA request sought:

EPA documentation substantiating whether or not the peer review process EPA actually employed to ensure the quality, integrity and reliability of agency and third-party climate science assessments evaluating the secondary health and environmental effects in the U.S. of primate climate change drivers or adaptation measures, upon which the Administrator's GHG endangerment and cause or contribute findings primarily relied, fully satisfied the highest and most rigorous level of IQA and EPA IQA-implementing guideline requirements.

March 21 FOIA request at 6-7. You then specified your request into nine document categories under the chapeau that the Technical Support Document (TSD) of the Endangerment Finding lists a number of core reference documents, and the FOIA request seeks to substantiate of the Agency's IQA compliance with these core reference documents. You further mention that the core reference documents incorporate by reference other documents. Id. at 7.

After review of this FOIA request, the Agency determined that your request did not reasonably describe the records you are seeking in a way that would permit EPA employees to identify and locate them. See 40 C.F.R. § 2.103(c). On April 1, 2014, the EPA promptly contacted you to provide you with another opportunity to clarify the records you are seeking so that the Agency could process your request. The Agency also consolidated your multiple FOIA requests in other Regions into one request, EPA-HQ-2014-004938. The Agency received your 60-page clarification on April 28, 2014.

I am once again contacting you because your April 28 clarification to FOIA request EPA-HQ-2014-004938 does not reasonably describe the records you are seeking in a way that will permit EPA employees to identify and locate them. Records are reasonably described if the

description “enable[s] a professional employee of the agency who was familiar with the subject area of the request to locate the record with a reasonable amount of effort.” *Marks v. United States*, 578 F.2d 261, 263 (9th Cir. 1978) (internal quotations and citation omitted). “Although courts have been wary to prohibit this requirement from becoming a loophole through which federal agencies can deny the public access to legitimate information, it has been held that broad, sweeping requests lacking specificity are not permissible.” *Id.*

The March 21 FOIA request and April 28 clarification do not reasonably describe the records you are seeking because of the following reasons:

- The April 28 clarification does not correlate to the original FOIA request: The April 28 clarification introduces new terms that are not included in your initial FOIA request. For example, each Section of your March 21 request begins with “Any and all EPA-HQ primary-source climate science peer review files” and/or “EPA-HQ secondary-source climate science peer review files.” Your April 28 clarification significantly expanded your FOIA request to request “all international, national, regional and local agency climate science-related files...”

The definitions of “climate science-related” or “EPA climate science-related files” on page 9 do not remotely pertain to any “peer review” process and substantially expands the scope of the request. Furthermore, the definition of “EPA climate science-related peer review files” on page 10 does not clearly describe the documents you are seeking. April 28 clarification at 10. For example, in your definition of “EPA climate science-related peer review files” you state it includes “all climate-related files noted above discussing or referring directly or indirectly to EPA or EPA-hired third party-contractors...” *Id.* The remainder of the sentence describes an example of an “EPA climate science-related peer review file.” In a plain language reading of this definition, it is expansive and has remote relevance to any peer review process.

This definition also includes “assessments, reports, studies, peer reviewed and gray literature” related to the 28 core reference documents; any record not designated as a core reference document but mentioned in the Endangerment Finding TSD; and any record not specifically designated to the TSD of the Endangerment Finding but “referenced in other scientific assessments, reports, and studies designated in the EPA-TSD as “core reference documents.”” *Id.* This sentence includes countless other records into the scope of this FOIA request. As a primary definition of your FOIA request, this definition does not reasonably describe the records you are seeking. Given the vagueness of this definition, it is also unclear as to how this definition applies to your initial March 21 FOIA request.

- Additionally, your request is drafted in such a complicated way that we are unable to understand the records you are seeking. For example, in Section 3 of your March 21 request you ask for:

“Any and all EPA-HQ primary-source climate science peer review files and EPA-HQ secondary-source climate science peer review files that EPA-HQ, incident to its direct

and indirect participation in the USGCRP during 2006-2011, shared and/or exchanged with and/or received from "other U.S. federal agencies" participating in the USGCRP, and which relate directly or indirectly to EPA-HQ's rendering of assistance in the preparation, development and/or review of such other federal agencies'-prepared and/or developed secondary-source synthesized and summarized USGCRP information, reports, studies and assessments."

This sentence contains five separate conditions and does not clearly state what documents you are seeking from EPA. Furthermore, there is no additional information about this Section 3 in your clarification of April 28.

- Sections 8 and 9 of the FOIA request pose questions for the Agency, and the Freedom of Information Act (FOIA) does not require federal agencies to respond to questions. Asking for files that "explain" or "describe" EPA actions, including "whether and how" those actions were carried out, is not within the scope of the FOIA. My letter of April 1 clearly stated: "the FOIA does not require federal agencies to respond to questions so please consider that as you are modifying your request."

Given these examples of the ambiguous and unclear descriptions of the records you are seeking, the Agency is once again requesting you provide a clarification of your March 21 FOIA request. Because this is the second attempt in requesting you to clarify your request, I will take this opportunity to describe how your request may be modified to identify the records you are seeking.

In order to reasonably identify the records you are seeking, you should identify the records with particular specificity. EPA regulations state that "whenever possible you should include specific information about each record sought, such as the date, title or name, author, recipient, and subject matter" and also that "[t]he more specific you are about the records or type of records you want, the more likely EPA will be able to identify and locate records responsive to your request." 40 C.F.R. § 2.103(c). Often this is accomplished by providing key words which employees may use to easily search for and determine if there are responsive records. For example, should you limit your request to records communicating with any specifically identified organization AND referencing a specific document you identify, your request would enable EPA staff familiar with the subject area to search for and locate any responsive records.

In order to determine the scope of this request and respond to you within a reasonable time period, you have seven calendar days from the date of this letter to provide further clarification to your March 21 FOIA request. You may email me at [hyland.dana@epa.gov](mailto:hyland.dana@epa.gov) to set up a meeting to further discuss your FOIA request. If we do not receive a response from you within this time period, we will consider your request to be voluntarily withdrawn. If you wish to request information connected to this request in the future, please reference the FOIA request number, EPA-HQ-2014-004938.

Sincerely,  
Dana Hyland