



October 3, 2011

BY EMAIL: [hq.foia@epa.gov](mailto:hq.foia@epa.gov)

National Freedom of Information Officer  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, NW (2822T)  
Washington, DC 20460

RE: FOIA request regarding ozone NAAQS reconsideration

Dear Freedom of Information Officer:

Pursuant to the Freedom of Information Act (FOIA), we request on behalf of American Lung Association copies of all records<sup>1</sup> that relate to or discuss:

- a) The attached email of September 2, 2011 from John Larmett;
- b) The “Statement by the President on the Ozone National Ambient Air Quality Standards” reproduced in the above-referenced email;
- c) The Statement by the EPA Administrator reproduced in the above-referenced email;
- d) The attached letter of September 2, 2011 from Cass R. Sunstein to EPA Administrator Lisa Jackson, and any records relating to preparation of that letter;
- e) Any communications to or from, or statements by, officials or staff in the Executive Office of the President, or by the President, relating in any way to the proposal published at 75 Fed Reg. 2938 (Jan 19, 2010)(“National Ambient Air Quality Standards for Ozone”). The request in this subparagraph is limited to records prepared or received after January 19, 2010;
- f) Actual, planned, proposed, or potential action by EPA, the Executive Office of the President, or by officials therein, or by the President with respect to the proposal published at 75 Fed. Reg. 2938 (Jan. 19, 2010). The request in this subparagraph is limited to records prepared or received after July 1, 2010.

You may exclude from the above request: i) any records that are publicly available in EPA docket number EPA-HQ-OAR-2005-0172; ii) any records available to the public on the web sites of EPA or the Executive Office of the President; iii) any materials filed in D.C. Circuit case 08-1200.

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<sup>1</sup> As used throughout this letter, the terms “record” and “records” shall mean all materials in whatever form (handwritten, typed, electronic, or otherwise produced, recorded, reproduced or stored) in EPA's possession, including, but not limited to, any correspondence, minutes of meetings, memoranda, notes, e-mails, notices, electronic files, tapes and telefaxes.

It may be possible for us to further limit this request if we have a better idea of the nature and scope of the records in your files. Please contact me to discuss this possibility. In addition, to the extent that records responsive to this request are available in a widely-used electronic format (e.g., pdf, excel, Word, or WordPerfect files), we would prefer to receive them in that format, provided that the electronic versions are in comprehensible form.

If you regard any of the requested records to be exempt from required disclosure under FOIA, we request that you disclose them nevertheless, as such disclosure would serve the public interest of educating citizens and advancing the purposes of the Clean Air Act. Such disclosure would also be warranted under the President's memorandum on FOIA at 74 Fed. Reg. 4683 (2009).

This FOIA request is submitted on behalf of the American Lung Association (ALA), a national nonprofit organization dedicated to saving lives by improving lung health and preventing lung disease. ALA requests that you waive all fees in connection with this request pursuant to 5 U.S.C. §552(a)(4)(A)(iii). A fee waiver is justified under EPA's factors governing such waivers, as follows:

*Factor 1. The subject of the request: Whether the subject of the requested records concerns "the operations or activities of the government." The subject of the requested records must concern identifiable operations or activities of the federal government, with a connection that is direct and clear, not remote.* The subject of the request plainly concerns the operations and activities of the government, specifically the activities of EPA, the President, and the Executive Office of the President in deciding on action with respect to EPA's proposal of January 19, 2010 to reconsider and revise the national ambient air quality standards (NAAQS) for ozone.

*Factor 2. The informative value of the information to be disclosed: Whether the disclosure is "likely to contribute" to an understanding of government operations or activities.* The information sought here is likely to be meaningfully informative about actions by the President, EPA, and the Executive Office of the President in reviewing, weighing, and deciding on action with respect to EPA's proposal to reconsider and strengthen the ozone NAAQS. The records sought are specifically those that pertain to this important decision making process. Further, EO 12866 (Oct. 4, 1993) expressly requires public disclosure of much of the information sought here, including "all documents exchanged between OIRA and the agency during the review by OIRA..." Thus, the President has already determined that disclosure of this sort of information is important to public understanding of the government's activities. In addition, the requested information is not already in the public domain. The request expressly excludes information that is already publicly available.

*Factor 3. The contribution to an understanding of the subject by the public is likely to result from disclosure:* The disclosure will contribute to the understanding of a reasonably broad audience of persons interested in the subject. ALA has a long history of promoting public understanding and awareness of the adverse health effects of air pollution, and of the role of government in protecting the public from air pollution, including ozone pollution. ALA carries out these functions by publishing reports on air quality (including its annual "State of the Air" report, which details air pollution threats in communities throughout the nation), by issuing public

comments on government actions proposed or needed to protect air quality, by explaining complex air quality regulatory action (and inaction) to the public, and by providing extensive information on its web site ([lungusa.org](http://lungusa.org)) about air pollution and governmental action needed to address it. ALA also engages in advocacy for strong clean air policies in Congress and before Executive branch officials. Among other things, ALA intends to use the above-requested documents to better inform public officials and the public about governmental action and inaction regarding ozone pollution. As one of the nation's most well-known public health organizations, ALA has proven abilities to disseminate information to large segments of the public, as evidenced by frequent press coverage of its reports and activities. Information about ALA's activities is widely distributed in ALA's published reports, press releases, public comments, media appearances, and on its web site. For all these reasons, an understanding of the subject by the public is likely to result from disclosure to ALA.

*Factor 4. The significance of the contribution to public understanding:* The public's understanding of the subject in question will likely be enhanced significantly by the disclosure sought here. Other than the very brief statements contained in the attached email and a 9/2/11 court filing by EPA, the public has seen almost no information on the facts, reasoning, and decision-making process that led to the decision to withdraw EPA's January 19, 2010 proposal to reconsider and strengthen the ozone NAAQS. Thus, disclosure of that information (which is sought herein) would plainly enhance public understanding as compared to the level of public understanding before the disclosure.

*Factor 5. The existence and magnitude of a commercial interest:* ALA has no commercial interest in the requested disclosure. As indicated above, ALA is a nonprofit organization that intends to use the requested information for public education and public health advocacy purposes.

For all the foregoing reasons, dissemination of the requested information is in the public interest because it is likely to contribute significantly to public understanding of the operations and activities of the government. Accordingly, we request that you waive all fees in connection with this request pursuant to 5 U.S.C. §552(a)(4)(A)(iii).

If you find that this request is unclear in any way, or that the number of records responsive to this request is relatively large or difficult to copy, please do not hesitate to call me at 202-667-4500, ext. 5203, to see if I can clarify the request or otherwise expedite and simplify your efforts to comply with it. You can also reach me by email at: [dbaron@earthjustice.org](mailto:dbaron@earthjustice.org).

Thank you for your assistance.

Sincerely,

David S. Baron  
Attorney