



**Department of Energy**  
Washington, DC 20585

September 30, 2022

Reed Rubinstein  
America First Legal Foundation  
611 Pennsylvania Ave SE #231  
Washington, DC 20003

Via email: FOIA@aflegal.org

RE: HQ-2022-00654-F

Dear Mr. Rubinstein:

This is final response to the request for information that you sent to the U.S. Department of Energy (DOE) under the Freedom of Information Act (FOIA), 5 U.S.C. § 552. You requested the following:

A. The Department's "Equity Action Plan," that was required by Section 7 of Executive Order 13985 (January 20, 2021) on "Advancing Racial Equity and Support for Underserved Communities Through the Federal Government," to be submitted to the Assistant to the President for Domestic Policy and the Director of the Office of Management and Budget by January 20, 2022.

B. The Department's "Equity Assessment," that was required by Section 5 of Executive Order 13985 (January 20, 2021) on "Advancing Racial Equity and Support for Underserved Communities Through the Federal Government," to be submitted to the Assistant to the President for Domestic Policy by August 8, 2021.

Your request was assigned to DOE's Office of Economic Impact & Diversity (ED) to conduct a search of its files for responsive documents. ED started its search on April 11, 2022, which is the cut-off date for responsive documents. ED has completed its search and identified two (2) documents responsive to your request. The documents are being released to you as described in the accompanying index.

Upon review, DOE has determined that certain information should be withheld from the document pursuant to Exemption 5 of the FOIA, 5 U.S.C. § 552 (b)(5).

Exemption 5 protects from mandatory disclosure "inter-agency or intra-agency memorandums or letters that would not be available by law to a party other than an agency in litigation with the agency." 5 U.S.C. § 552 (b)(5). Exemption 5 incorporates the deliberative process privilege which protects recommendations, advice, and opinions that



are part of the process by which agency decisions and policies are formulated. The information withheld under Exemption 5 consists of intra-agency pre-decisional, deliberative information.

Some of the information withheld under Exemption 5 has been deemed pre-decisional and deliberative in nature, including agency progress reports. The information is both pre-decisional because it was developed before the agency adopted a final position, and deliberative, in that it reflects the opinions of individuals who were consulted as part of a decision-making process that will lead to the agency's final policy decision about these matters. The DOE may consider these preliminary views as part of the process that will lead to the agency's final decision about these matters. The information does not represent a final agency position, and its release would compromise the deliberative process by which the government makes its decisions. Therefore, portions of the documents are being withheld under Exemption 5 of the FOIA as pre-decisional material that is part of the agency's deliberative process.

With respect to the discretionary disclosure of deliberative information, the quality of agency decisions would be adversely affected if frank, written discussion of policy matters were inhibited by the knowledge that the content of such discussion might be made public. For this reason, DOE has determined that discretionary disclosure of the deliberative material is not in the public interest because foreseeable harm could result from such disclosure.

Pursuant to 10 C.F.R. § 1004.7(b)(2), I am the individual responsible for the determination to withhold the information described above. The FOIA requires that "any reasonably segregable portion of a record shall be provided to any person requesting such record after deletion of the portions which are exempt." 5 U.S.C. § 552(b). As a result, a redacted version of the documents is being released to you in accordance with 10 C.F.R. § 1004.7(b)(3).

This determination, as well as the adequacy of the search, may be appealed within 90 calendar days from your receipt of this letter pursuant to 10 C.F.R. § 1004.8. Appeals should be addressed to Director, Office of Hearings and Appeals, HG-1, L'Enfant Plaza, U.S. Department of Energy, 1000 Independence Avenue, S.W., Washington, D.C. 20585-1615. The written appeal, including the envelope, must clearly indicate that a FOIA appeal is being made. You may also submit your appeal to [OHA.filings@hq.doe.gov](mailto:OHA.filings@hq.doe.gov), including the phrase "Freedom of Information Appeal" in the subject line (this is the preferred method by the Office of Hearings and Appeals). The appeal must contain all of the elements required by 10 C.F.R. § 1004.8, including a copy of the determination letter. Thereafter, judicial review will be available to you in the Federal District Court either: 1) in the district where you reside; 2) where you have your principal place of business; 3) where DOE's records are situated; or 4) in the District of Columbia.

You may contact DOE's FOIA Public Liaison, Alexander Morris, FOIA Officer, Office of Public Information, at 202-586-5955, or by mail at MA-46/Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585, for any further assistance and to

discuss any aspect of your request. Additionally, you may contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA mediation services they offer. The contact information for OGIS is as follows: Office of Government Information Services, National Archives and Records Administration, 8601 Adelphi Road-OGIS, College Park, Maryland 20740-6001, e-mail at [ogis@nara.gov](mailto:ogis@nara.gov); telephone at 202-741-5770; toll free at 1-877-684-6448; or facsimile at 202-741-5769.

The FOIA provides for the assessment of fees for the processing of requests. *See* 5 U.S.C. § 552(a)(4)(A)(i); *see also* 10 C.F.R. § 1004.9(a). In our April 7, 2022 letter, you were informed your request was placed in the “other” category for fee purposes. Requesters in this category are entitled to two (2) free hours of search time and are provided 100 pages at no cost. In that same letter, you were informed your request for a fee waiver was granted. Thus, no fees will be charged for processing your request.

If you have any questions about the processing of the request or this letter, you may contact Ms. Chidinma Nwosu or me at:

MA-46/ Forrestal Building  
1000 Independence Avenue, S.W.  
Washington, D.C. 20585  
(202) 586-5955.

I appreciate the opportunity to assist you with this matter.

Sincerely,

Alexander C. Morris  
FOIA Officer  
Office of Public Information

Enclosures

## INDEX

**Request #: HQ-2022-00654-F**

**Final response for request from Mr. Reed Rubinstein for:**

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B. The Department's "Equity Assessment," that was required by Section 5 of Executive Order 13985 (January 20, 2021) on "Advancing Racial Equity and Support for Underserved Communities Through the Federal Government," to be submitted to the Assistant to the President for Domestic Policy by August 8, 2021.

DOE's Office of Economic Impact & Diversity (ED) has completed its search and identified two (2) documents responsive to your request.

- One (1) document *is being released in its entirety*.
- One (1) document *is being withheld in part pursuant to Exemption (b)(5)*.