

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

GOVERNMENT ACCOUNTABILITY &
OVERSIGHT,

Plaintiff,

v.

UNITED STATES DEPARTMENT OF
ENERGY,

Defendant.

Lead case:
Civil Action No. 24-1829 (RDM)

No. 24-3500

JOINT STATUS REPORT

Plaintiff Government Accountability & Oversight (“Plaintiff”) and Defendant U.S. Department of Energy (“Defendant” or “the Department”), by and through their respective counsel, submit the following Joint Status Report in this Freedom of Information Act (“FOIA”) case, pursuant to the Court’s January 2, 2025 Minute Order.

1. On December 16, 2024, Plaintiff filed a complaint in Civil Action No. 24-3500 related to FOIA request HQ-2025-00716-F.

2. On January 2, 2025, the Court consolidated Civil Action No. 24-3500 with this consolidated action, ordered Defendant to process the records at issue in Civil Action No. 24-3500 (FOIA Request No. HQ-2025-00716-F) at a rate of no fewer than 500 pages per month, beginning January 2025, and directed the parties to file a joint status report on the first business day of each month, beginning February 3, 2025, until the production is complete. ECF No. 32.

3. On January 30, 2025, Defendant provided Plaintiff a first partial response of eleven (11) documents. Those eleven documents, which were withheld in part, equaled five hundred eighteen (518) pages. *See* ECF No. 40-1.

4. On February 27, 2025, Defendant provided Plaintiff the second partial response of five (5) documents. Those five documents, which were withheld in part, equaled five hundred seven (507) pages. *See* ECF No. 44.

5. The status of the request is as follows:

- a. On March 31, 2025, Defendant delivered to Plaintiff the third partial production for FOIA Request No. HQ-2025-00716-F. That production consisted of four (4) documents. One (1) document was released in its entirety, two (2) documents were withheld in part pursuant to Exemption (b)(6), and one document was withheld in part pursuant to the attorney-client privilege protection in Exemption (b)(5).
- b. This production includes two documents (Documents 9 and 22) which include draft studies that were posted on the House Committee on Oversight and Government Reform's website, *see* [Comer Applauds Trump's DOE for Providing Transparency on Key LNG Study Withheld by Biden Officials - United States House Committee on Oversight and Accountability](#). Document 9 is being released in full. Document 22—which includes both a transmittal email and a draft study—is being withheld in part under Exemption (b)(6). The information withheld consists of two mobile telephone numbers in the transmittal email. The transmittal emails for Documents 9 and 22 were not posted on the House Committee on Oversight and Government Reform's website.
- c. The document numbers for this production were carried over and are consistent with the document numbers used in the filings regarding FOIA Request No.

HQ-2024-02097-F.

- d. The documents produced for this partial production equaled five hundred (504) pages.
- e. This production includes information for which Defendant asserts that it is discretionarily waiving application of the deliberative process privilege.

Defendant's position is as follows:

- i. Some Freedom of Information Act exemptions themselves are discretionary, not mandatory. *See, e.g., Chrysler Corp. v. Brown*, 441 U.S. 281, 293 (1979). It follows that agencies may make “discretionary disclosures” of exempt information, as a matter of administrative discretion, where they are not otherwise prohibited by law.
- ii. Based on the foregoing principle, DOE has determined that the public interest in the release of certain drafts of a 2023 liquefied natural gas export study (“2023 study drafts”) at issue in FOIA Requests HQ-2024-02097-F and HQ-2025-00716-F outweighs the previously recognized foreseeable harm that was the basis for prior deliberative process privilege withholdings under Exemption (b)(5).
- iii. Therefore, DOE discretionarily waived application of the deliberative process privilege in this third production in order to provide the 2023 study drafts and their transmittal emails to Plaintiff without deliberative process redactions. With respect to the FOIA redactions made in prior productions related to this matter, no admissions of error or waivers for invoking applicable FOIA exemptions for similar or related information

in the future were made hereby. DOE retains all rights under the law that it currently would have with regard to any and all other documents and retains the right to assert such privileges and exemptions on a case-by-case basis as it deems appropriate.

f. Defendant represents that it is working diligently on processing this FOIA request in light of the overall number of FOIA requests received this year by the Department and the limited resources available.

6. By May 30, 2025, Defendant expects to have finished processing all draft 2023 LNG export studies and their transmittal emails from NETL (at issue in the summary judgment motions regarding Plaintiff's position that FOIA Request HQ-2024-02097-F also sought draft studies). By that date, Defendant further intends to discretionarily release (1) the documents and information Defendant previously redacted pursuant to the deliberative process privilege in Productions 1 (delivered January 30, 2025) and 2 (delivered February 27, 2025) for HQ-2025-00716-F, and (2) the documents and information Defendant previously redacted pursuant to the deliberative process privilege in productions for HQ-2024-02116-F and HQ-2024-02254-F.
7. With respect to what the agency asserts is a discretionary release of the FOIA redactions in Productions 1 and 2 for HQ-2025-00716-F and the final productions for HQ-2024-02116-F and HQ-2024-02254-F, no admissions of error or waivers for invoking applicable FOIA exemptions for similar or related information in the future are made thereby. Defendant retains all rights under the law that it currently would have with regard to any and all other documents and retains the right to assert such privileges and exemptions on a case-by-case basis as it deems appropriate.

8. Plaintiff's position is that the agency is statutorily-required to release the materials at issue in this case under FOIA, and that its releases are therefore not "discretionary" in nature. Plaintiff further notes that at ECF No. 46, Representative Comer is quoted as saying that Congress became aware of the records that are the gravamen of the its oversight because of this litigation.
9. The parties agree that this case should remain stayed through June 6, 2025 so that the agency can produce the materials described above, and continue processing the materials at issue in Case No 1:24-cv-3500. On May 30, 2025, the parties agree that a subsequent joint status report should be filed, which updates the court on any matters that remain in dispute and provides a schedule for resolving any remaining disputes if so.

Dated: April 1, 2025

Respectfully submitted,

/s/Mathew D. Hardin

Mathew D. Hardin, D.C. Bar # 1032711

Hardin Law Office

101 Rainbow Drive # 11506

Livingston, TX 77399

Phone: (202) 802-1948

Email: MathewDHardin@protonmail.com

/s/ Christopher C. Horner

Christopher C. Horner, D.C. Bar #440107

1725 I Street NW, Suite 300

Washington, DC 20006

(202) 262-4458

chris@chonerlaw.com

Counsel for Plaintiff

EDWARD R. MARTIN, JR. D.C. Bar #481866

United States Attorney

By: /s/ Brenda González Horowitz

BRENDA GONZÁLEZ HOROWITZ

D.C. Bar No. 1017243

Assistant United States Attorney

601 D Street, N.W.

Washington, DC 20530

(202) 252-2512

brenda.gonzalez.horowitz@usdoj.gov

Attorneys for the United States of America