

March 25, 2019

SUBMITTED ELECTRONICALLY

National Freedom of Information Officer
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW (2822T)
Washington, D.C. 20460
(202) 566-1667

Re: Freedom of Information Act Request for Records Pertaining to an Actual or Possible Review or Assessment of Climate Change, Including Climate Science

Dear National Freedom of Information Officer:

Environmental Defense Fund (“EDF”) respectfully requests records, as that term is described at 5 U.S.C. § 552(f)(2) of the Freedom of Information Act (“FOIA”), of the U.S. Environmental Protection Agency (“EPA” or the “Agency”), relating to any efforts or activities involving the White House—including but not limited to the National Security Council—pertaining to an actual or possible review or assessment of climate change, including climate science and climate change impacts.¹ In this letter, the term “climate review” encompasses the efforts or activities, individually or collectively, described in the immediately preceding sentence. The term “climate review participants” refers to any panel, group, team, committee, or individuals conducting, leading, planning, discussing, or participating in a climate review.

This FOIA request covers records relating to any climate review, including but not limited to:

- the purpose of any climate review
- the process of coordinating, organizing, and executing any climate review

¹ The subject of this request includes, but is not limited to, any activities pertaining to the formation or operation of a “Presidential Committee on Climate Security.”

- the identities of any climate review participants
- whether or not to conduct a climate review through a federal advisory committee
- the purpose and nature of the Agency’s involvement in, or association with, any climate review
- participation in any climate review by any EPA employee(s)
- any meetings or discussions about a climate review any EPA employee(s) have attended, or have been scheduled, invited, or directed to attend
- efforts or activities pertaining to—or involvement in—any climate review by any official(s) or employee(s) of any other federal agencies
- the necessary or preferred qualifications or credentials for climate review participants
- any materials that are being considered for review, including but not limited to: the Fourth National Climate Assessment,² the Pentagon Climate Change Report,³ the 2019 Worldwide Threat Assessment,⁴ and the IPCC Special Report⁵
- the method or means by which climate review participants may review any materials
- any potential work product of any climate review, or climate review participants, written or otherwise
- any intended use of any work product of any climate review
- any expected timeline for activities related to any climate review, including delivery of any work product
- whether and what information or work product developed by any climate review, or climate review participants, will be made public
- any information pertaining to the budget or expenses of any climate review, including allotted travel expenses and per diem for climate review participants

For the purposes of this request, “records” means information of any kind, including internal and external communications, writings (handwritten, typed, electronic or otherwise produced,

² U.S. Global Change Research Program, *Climate Science Special Report: Fourth National Climate Assessment* (2017) [hereinafter *NCA4 Volume I*], https://science2017.globalchange.gov/downloads/CSSR2017_FullReport.pdf; USGCRP, *Fourth National Climate Assessment, Volume II: Impacts, Risks, and Adaptation in the United States* (2018) [hereinafter *NCA4 Volume II*], https://nca2018.globalchange.gov/downloads/NCA4_2018_FullReport.pdf.

³ Department of Defense, *Report on Effects of a Changing Climate to the Department of Defense* (Jan. 2019), https://partner-mco-archive.s3.amazonaws.com/client_files/1547826612.pdf.

⁴ Daniel R. Coats, *Worldwide Threat Assessment of the US Intelligence Community* (Jan. 29, 2019), <https://www.dni.gov/files/ODNI/documents/2019-ATA-SFR---SSCI.pdf>.

⁵ Intergovernmental Panel on Climate Change, *Special Report on Global Warming of 1.5°C* (Oct. 6, 2018), <https://www.ipcc.ch/sr15/>.

reproduced or stored), letters, memoranda, correspondence,⁶ notes, applications, completed forms, studies, reports, reviews, guidance documents, policies, telephone conversations, telefaxes, e-mails (and any attachments thereto), any means of instant messaging, text messages, documents, databases, drawings, graphs, charts, photographs, minutes of meetings, electronic and magnetic recordings of meetings, and any other compilation of data from which information can be obtained. Without limitation, the records requested include records relating to the topics described above at any stage of development, whether proposed, draft, pending, interim, final or otherwise. All of the foregoing are included in this request if they are in the possession of or otherwise under the control of the Agency, any of its offices, or any of its custodians.

If any of the Agency employees are using personal email or instant messenger accounts to conduct Agency matters, EDF respectfully requests that the Agency search those personal accounts, and produce responsive records found therein, in addition to searching and providing records from each employee's official Agency email or instant messenger account.

EDF respectfully requests that the Agency search records from November 1, 2018, through the date when the Agency conducts its search for responsive records.

If any of the records sought in this request are deemed by the Agency to be properly withheld under a FOIA exemption, 5 U.S.C. § 552(b), please provide EDF with an explanation, for each such record or portion thereof, sufficient to identify the record and the particular exemption(s) claimed.

Request for Expedited Processing

EDF respectfully seeks expedited processing pursuant to 5 U.S.C. § 552(a)(6)(E) and 40 C.F.R. § 2.104(e)(1)(ii), which applies when there is “[a]n urgency to inform the public about an actual or alleged Federal government activity, if the information is requested by a person primarily engaged in disseminating information to the public.” In support of this request, I certify that the following statements are true and correct to the best of my knowledge and belief:

1. EDF engages in extensive, daily efforts to inform the public about matters involving environmental policy, including climate science and climate change impacts. For example, EDF has multiple channels for distributing information to the public, including through direct communication with its more than 2 million members and supporters,

⁶ “Correspondence” includes, but is not limited to, correspondence transmitted through electronic platforms such as messaging applications or storage of documents in commonly accessible locations. “Correspondence” also includes transmissions where the individual whose records are searched is the sender or recipient, regardless of whether such individual is the sole, primary, or intended recipient.

press releases, blog posts, active engagement on social media, and frequent appearances by staff in major media outlets.⁷

2. Efforts to initiate a climate review within the White House are active and ongoing, as evidenced by a recent White House discussion on the topic, to which officials from several agencies were invited.⁸
3. The climate review has garnered significant media coverage and elicited concerns from a wide range of stakeholders and observers for, among other reasons, the possibility that it would not utilize sound scientific research and processes.⁹
4. According to reports, the climate review may be led by National Security Council Senior Director William Happer—who “is not formally trained as a climate scientist,” and who

⁷ See, e.g., Rama Zakaria, *Clean Power Plan “Replacement” Will Increase Carbon Pollution in Many States – New Study*, EDF Climate 411 Blog (Feb. 13, 2019), <http://blogs.edf.org/climate411/2019/02/13/clean-power-plan-replacement-will-increase-carbon-pollution-in-many-states-new-study/>; Moms Clean Air Force Senior Director Dominique Browning, *This Coal Lobbyist Should Not Run the E.P.A.*, N.Y. Times (Jan. 14, 2019), <https://www.nytimes.com/2019/01/14/opinion/epa-trump-andrew-wheeler.html>; Ilissa Ocko, *Record-Warm Oceans: How Worried Should We Be?*, EDF Voices (Feb. 22, 2019), <https://www.edf.org/blog/2019/02/22/record-warm-oceans-how-worried-should-we-be>; Monika Barcikowska, *Heatwaves to Become More Deadly and Increase Global Inequality*, EDF Climate 411 Blog (Jan. 24, 2019), <http://blogs.edf.org/climate411/2019/01/24/heatwaves-to-become-more-deadly-and-increase-global-inequality/>; Martha Roberts, *Trump Administration Ends Talks with California, Presses Ahead with Clean Car Standards Rollback*, EDF Climate 411 Blog (Feb. 21, 2019), <http://blogs.edf.org/climate411/2019/02/21/trump-administration-ends-talks-with-california-presses-ahead-with-clean-car-standards-rollback/>.

⁸ Juliet Eilperin and Missy Ryan, *White House Prepares to Scrutinize Intelligence Agencies’ Finding That Climate Change Threatens National Security*, The Washington Post (Feb. 20, 2019), https://www.washingtonpost.com/national/health-science/white-house-readies-panel-to-assess-if-climate-change-poses-a-national-security-threat/2019/02/19/cc8b29e-3396-11e9-af5b-b51b7ff322e9_story.html.

⁹ See, e.g., Letter from Rep. Smith et al. to President Trump on Proposed Climate Change Panel (Feb. 28, 2019), <https://science.house.gov/sites/democrats.science.house.gov/files/documents/2.28.19%20Letter%20to%20Trump%20Secret%20Climate%20Panel.pdf>; Alice Hill, *Trump’s New Climate Panel is a Waste of Time and Money*, CNN (Mar. 2, 2019), <https://www.cnn.com/2019/03/02/opinions/trumps-new-climate-panel-is-a-waste-of-time-and-money-hill/index.html>; Renae Reints, *The Trump Administration Doesn’t Want Its New Climate ‘Advisory Panel’ to Abide by Public Records*, Fortune (Feb. 25, 2019), <http://fortune.com/2019/02/25/trump-climate-advisory-panel/>; Chris D’Angelo, *Meet the Ostriches Under Consideration for Trump’s Anti-Science Climate Panel*, Huffington Post (Feb. 26, 2019), https://www.huffpost.com/entry/trump-climate-change-panel_n_5c7470c6e4b0bf16620250d4; Brett Samuels, *Dozens of Ex-officials Warn Trump Against White House Panel on Climate Change*, The Hill (Mar. 5, 2019), <https://thehill.com/policy/energy-environment/432675-dozens-of-ex-officials-warn-trump-against-white-house-panel-on>; Ray Mabus, *Don’t Ignore Military Advice on Climate Change, Mr. President*, Military Times (Mar. 7, 2019), <https://www.militarytimes.com/opinion/commentary/2019/03/07/dont-ignore-military-advice-on-climate-change-mr-president/>.

co-founded an organization that seeks to “counter this myth that CO₂ is a dangerous pollutant”¹⁰—and would entail reexamination of the best and latest scientific understanding of our nation’s most significant environmental challenge.

5. Organizing this climate review in a nontransparent or unbalanced manner could undermine the mandates and safeguards that have historically guided U.S. climate science. In contrast, the recent Climate Science Special Report released by the U.S. Global Change Research Program utilized a process of “continuous and transparent participation of scientists and stakeholders across regions and sectors” and implemented extensive quality assurance procedures.¹¹ Additionally, Volume II of the Fourth National Climate Assessment, produced by “[a] team of more than 300 federal and non-federal experts,” “was thoroughly reviewed by external experts and the general public,” including “[a]n expert external peer review of the whole report . . . performed by an ad hoc committee of the National Academies of Sciences, Engineering, and Medicine.”¹²
6. In addition to the reports cited above, our nation’s top environmental agency has repeatedly and extensively reviewed climate science, basing its conclusions on transparent, rigorous, and peer-reviewed research. Examples of the Environmental Protection Agency’s analysis include:
 - Endangerment and Cause or Contribute Findings for Greenhouse Gases Under Section 202(a) of the Clean Air Act: “The Administrator has determined that the body of scientific evidence compellingly supports this finding” “that greenhouse gases in the atmosphere may reasonably be anticipated both to endanger public health and to endanger public welfare.”¹³
 - Standards of Performance for Greenhouse Gas Emissions From New, Modified, and Reconstructed Stationary Sources: Electric Utility Generating Units: “The EPA has carefully reviewed these recent [major scientific] assessments” released since the Endangerment Finding. “The findings of the recent scientific assessments confirm and strengthen the conclusion that GHGs endanger public health, now and in the future.”¹⁴

EPA’s reviews of robust, peer-reviewed scientific assessments have consistently bolstered the conclusion that anthropogenic greenhouse gases pose a severe risk to human

¹⁰ See Eilperin & Ryan, *supra* note 8.

¹¹ USGCRP, *NCA4 Volume I* at 2.

¹² USGCRP, *NCA4 Volume II* at 2.

¹³ 74 Fed. Reg. 66,496, 66,497 (Dec. 15, 2009).

¹⁴ 80 Fed. Reg. 64,510, 64,517-18 (Oct. 23, 2015).

health and welfare. Given the significant and widespread interest in this area, the public needs immediate access to information about efforts to review or scrutinize assessments that our foremost environmental agency has previously undertaken in a sound, thorough, and conclusive manner—and that have already been upheld by the U.S. Court of Appeals for the D.C. Circuit.¹⁵

7. Moreover, the Department of Defense and U.S. intelligence community have published numerous reports identifying climate change as a serious threat to national security.

Examples include:

- Department of Defense, Report on Effects of a Changing Climate to the Department of Defense (2019): “The effects of a changing climate are a national security issue with potential impacts to Department of Defense missions, operational plans, and installations.”¹⁶
- Department of Defense, Climate-Related Risk to DoD Infrastructure Initial Vulnerability Assessment Survey (SLVAS) Report (2018): “DoD looks at climate through the lens of its mission. From that perspective, changes in climate affect national security in several ways.”¹⁷
- National Intelligence Council, Implications for U.S. National Security of Anticipated Climate Change (2016): “Climate change and its resulting effects are likely to pose wide-ranging national security challenges for the United States . . . over the next 20 years through . . . [t]hreats to the stability of countries, [h]eightened social and political tensions, [a]dverse effects on food prices and availability, [i]ncreased risks to human health, [n]egative impacts on investments and economic competitiveness, [and] [p]otential climate discontinuities and secondary surprises.”¹⁸
- Department of Defense, National Security Implications of Climate-Related Risks and a Changing Climate (2015): “[C]limate change is an urgent and growing threat to our national security, contributing to increased natural disasters, refugee flows, and conflicts over basic resources such as food and water. These impacts

¹⁵ *Coalition for Responsible Regulation v. EPA*, 684 F.3d 102, 119-22 (D.C. Cir. 2012).

¹⁶ *Report on Effects of a Changing Climate to the Department of Defense*, *supra* note 3, at 2.

¹⁷ Department of Defense, *Climate-Related Risk to DoD Infrastructure Initial Vulnerability Assessment Survey (SLVAS) Report* at 7 (Jan. 2018), <https://climateandsecurity.files.wordpress.com/2018/01/tab-b-slvas-report-1-24-2018.pdf>.

¹⁸ National Intelligence Council, *Implications for U.S. National Security of Anticipated Climate Change* at 3 (Sept. 2016), https://www.dni.gov/files/documents/Newsroom/Reports%20and%20Pubs/Implications_for_US_National_Security_of_Anticipated_Climate_Change.pdf.

are already occurring, and the scope, scale, and intensity of these impacts are projected to increase over time.”¹⁹

These reports, and many others,²⁰ highlight the inextricable link between climate change and national security. Given the importance of national security to the public, it is essential that federal government analyses of climate change impacts be conducted in a transparent, credible, and rigorous manner, and that the public be fully informed about the government’s approach.

8. Many federal agencies have portfolios that include climate-related rulemakings. An opaque or scientifically flawed review of climate science could adversely affect these portfolios and jeopardize the mission and work of these agencies.
9. Any review of climate science must be subjected to public scrutiny and input. The public must understand early on how any climate review is being envisioned and organized, in addition to any advice or work product resulting from that review. The public should have an opportunity to see and respond to the requested records before the climate panel has completed significant work. Expedited processing is necessary to achieve that end.

Request for Fee Waiver

As a non-partisan, non-profit organization that provides information that is in the public interest, EDF respectfully requests a waiver of fees associated with this request. FOIA provides for records to be furnished without charge “if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.”²¹ As explained below, we are not seeking information for any commercial purpose, and the records received will contribute to a greater public understanding of issues of considerable public interest.

¹⁹ Department of Defense, *National Security Implications of Climate-Related Risks and a Changing Climate* at 3 (Jul. 2015), https://climateandsecurity.files.wordpress.com/2014/01/15_07_24-dod_gcc_congressional-report-on-national-security-implications-of-climate-change.pdf.

²⁰ See Defense, The Center for Climate & Security (last visited Mar. 15, 2019), available at <https://climateandsecurity.org/resources/u-s-government/defense/>; Intelligence, The Center for Climate & Security (last visited Mar. 15, 2019), available at <https://climateandsecurity.org/resources/u-s-government/intelligence/>.

²¹ 5 U.S.C. § 552(a)(4)(A)(iii).

EPA's FOIA regulations establish six factors to determine whether a request satisfies the statutory requirements for a fee waiver.²² EDF's request satisfies each of these factors.

First, the subject of EDF's request concerns the "operations or activities of the government"²³ because it seeks records created by or shared with a government agency in the context of a government-conducted review of the science demonstrating the existence of a major national security threat. EDF is requesting memoranda, emails, correspondence, and other records with a "direct and clear" connection to this consequential government-conducted review.²⁴ According to the Department of Justice's FOIA guidelines, "in most cases records possessed by a federal agency will meet this threshold."²⁵

Second, disclosure of the information sought by this request is "likely to contribute to an understanding of government operations or activities."²⁶ EDF seeks records that would illuminate the purpose, form, substance, and timeline of the government's contemplated climate review. Very little concrete information about this review is publicly available, and the records sought are not, to EDF's knowledge, already in the public domain. Therefore, any records released by the Agency will increase public understanding.

Third, disclosure of the information will "contribute to the understanding of a reasonably broad audience of persons interested in the subject."²⁷ There is significant public interest in the climate review, as evidenced by the current and widespread news coverage following its recent announcement.²⁸ Climate science illuminates the public's understanding of the grave threats to the health and welfare of the American people presented by uncontrolled greenhouse gas emissions. Any review aimed at undermining this science, especially one organized at the highest levels of the federal government and with possible major ramifications for public policy, is therefore of broad public interest and concern. Further, this review purports to be concerned with climate science's implications for national security, which is undoubtedly a significant public interest. Concrete information regarding the climate review is nonetheless scarce, and

²² 40 C.F.R. § 2.107(1)(2)(i)-(iv).

²³ *Id.* § 2.107(1)(2)(i).

²⁴ *Id.*

²⁵ U.S. Department of Justice, DEPARTMENT OF JUSTICE GUIDE TO THE FREEDOM OF INFORMATION ACT: FEES AND FEE WAIVERS, at 27 (Aug. 23, 2013), <https://www.justice.gov/sites/default/files/oip/legacy/2014/07/23/fees-feewaivers.pdf>.

²⁶ 40 C.F.R. § 2.107(1)(2)(ii).

²⁷ *Id.* § 2.107(1)(2)(iii).

²⁸ *See, e.g., supra* note 9.

reports indicate government maneuvering to facilitate secrecy and avoid public scrutiny.²⁹ Given the importance and salience of, and widespread interest in, a review of climate science, records responsive to this request would be of interest to a broad public audience.

Importantly, as alluded to previously, EDF has the ability and intention to “effectively convey” this information to the public.³⁰ EDF regularly communicates with our more than two million members and supporters, as well as with the broader public, about topics of importance to human health and the environment.³¹ EDF has more than 180,000 followers on Twitter and more than 330,000 followers on Facebook, providing ample pathways for distributing information. EDF also has in-house staff with expertise in climate science and policy who engage in frequent public communication about the implications of climate analyses.³² Moreover, in addition to its own capacity to convey information to the public,³³ EDF shares important data with journalists to help enhance public knowledge.³⁴ We are thus well-qualified to present the information in the records to the public in an accessible manner.

²⁹ See Juliet Eilperin et al., *White House to Set Up Panel to Counter Climate Change Consensus, Officials Say* (Feb. 24, 2019), https://www.washingtonpost.com/national/health-science/white-house-to-select-federal-scientists-to-reassess-government-climate-findings-sources-say/2019/02/24/49cd0a84-37dd-11e9-af5b-b51b7ff322e9_story.html?utm_term=.20132e0cb382.

³⁰ 40 C.F.R. § 2.107(l)(2)(iii).

³¹ See, e.g., Fred Krupp, *By Mapping Its Own Air Pollution, London Can Help Cities Worldwide*, EDF Voices (Jan. 18, 2019), <https://www.edf.org/blog/2019/01/18/mapping-its-own-air-pollution-london-can-help-cities-worldwide>; Nat Keohane, *You’re Not Imagining This – Politicians in Washington are Actually Talking Climate Again*, EDF Voices (Mar. 14, 2019), <https://www.edf.org/blog/2019/03/14/youre-not-imagining-politicians-washington-are-actually-talking-climate-again>; Martha Roberts, *Andrew Wheeler Takes the Helm at EPA. What’s Next for Crucial Safeguards?*, EDF Climate 411 Blog (Mar. 7, 2019), <http://blogs.edf.org/climate411/2019/03/07/andrew-wheeler-takes-the-helm-at-epa-whats-next-for-crucial-safeguards/>; Susanne Brooks & Elgie Holstein, *Accelerating Clean Energy Innovation is Key to Solving the Climate Crisis*, EDF Climate 411 Blog (Mar. 14, 2019), <http://blogs.edf.org/climate411/2019/03/14/accelerating-clean-energy-innovation-is-key-to-solving-the-climate-crisis/>; Ben Levitan & Lance Bowman, *New Attorneys General are Good News for Public Health and the Environment in 2019*, EDF Climate 411 Blog (Jan. 9, 2019), <http://blogs.edf.org/climate411/2019/01/09/new-attorneys-general-are-good-news-for-public-health-and-the-environment-in-2019/>.

³² See, e.g., Casey Ivanovich, *Six Takeaways from the New Climate Report*, EDF Climate 411 Blog (Oct. 8, 2018), <http://blogs.edf.org/climate411/2018/10/08/six-takeaways-from-the-new-climate-report/>; Ilissa Ocko, *It’s Now, It’s Us, It’s Not Over – The Top 7 Takeaways from the New Climate Change Report*, EDF Climate 411 Blog (Nov. 15, 2017), <http://blogs.edf.org/climate411/2017/11/15/its-now-its-us-its-not-over-the-top-7-takeaways-from-the-new-climate-change-report/>.

³³ See, e.g., Promoting Government Transparency, Environmental Defense Fund (last updated Jan. 10, 2019), <https://www.edf.org/climate/promoting-government-transparency>.

³⁴ See, e.g., Ryan Beene, *White House Told EPA to Ready California Autos Challenge in 2017*, Bloomberg (June 1, 2018), <https://www.bloomberg.com/news/articles/2018-06-01/white-house-told-epa-to-ready-california-autoschallenge-in-2017> (reporting information disclosed through an EDF FOIA request); Ellen Knickmeyer, *Emails*

Fourth, disclosure of the information is likely to “contribute significantly to public understanding of government operations or activities.”³⁵ As mentioned above, official, concrete information regarding the proposed climate review is scarce, and reports indicate that the government may structure the climate review so as to avoid the transparency requirements of the Federal Advisory Committee Act.³⁶ Records responsive to this request would represent a significant increase in the level of information regarding the climate review.

Finally, EDF is a non-partisan, non-profit organization, and does not have a commercial interest in acquiring this information.³⁷ Therefore, our interest in these records is not primarily commercial.³⁸

Accordingly, we respectfully request that the documents be furnished without charge.

For ease of administration and to conserve resources, we will accept documents produced in a readily accessible electronic format. In the event EDF’s request for a fee waiver is denied or if you have any questions about this request, please contact me immediately by telephone at (202) 572-3318 or by email at blevitan@edf.org.

Respectfully submitted,

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Show Cooperation Among EPA, Climate-Change Deniers, Assoc. Press (May 26, 2018), <https://apnews.com/64cd37b0503440c0b92e6ca075f87dd4> (same); Michael Biesecker, *Emails: Pruitt Monitored Changes to EPA Webpages on Climate*, Assoc. Press (Feb. 2, 2018), <https://www.apnews.com/85e69300761040a2995f5b457f2ac9f4> (same); Coral Davenport & Eric Lipton, *Scott Pruitt Is Carrying Out His E.P.A. Agenda in Secret, Critics Say*, N.Y. Times (Aug. 11, 2017), <https://www.nytimes.com/2017/08/11/us/politics/scott-pruitt-epa.html> (same).

³⁵ 40 C.F.R. § 2.107(1)(2)(iv).

³⁶ See Eilperin, *supra* note 29.

³⁷ 40 C.F.R. § 2.107(1)(3)(i).

³⁸ *Id.* § 2.107(1)(3)(ii).