



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, DC 20460
THE OFFICE OF INSPECTOR GENERAL**

David B. McCoy
Citizen Action New Mexico
P.O. box 4276
Albuquerque, NM 87196-4276

Re: Freedom of Information Act (FOIA) Appeal, HQ-APP-00054-10

Dear Mr. McCoy:

This responds to your appeal dated February 2, 2010.

On August 17, 2009, in connection with a U.S. Environmental Protection Agency (EPA), Office of the Inspector General (OIG) evaluation of the Sandia Mixed Waste Landfill, you requested "access to full and complete copies of all work papers and documents containing factual information including the report prepared for the investigation including all documents in any form, whether from schedules, correspondence, memoranda, tape recordings, electronic or handwritten communications, notes or handout documents used to prepare the report regarding the well monitoring network at Sandia National Laboratories' Mixed Waste Landfill." On January 11, 2010, the OIG denied your request pursuant to 5 U.S.C. § 552(b)(5) (Exemption 5). You appealed the initial determination on February 2, 2010, and clarified that your appeal request was for a "report ['produced by the EPA OIG investigative team'] and accompanying schedules, documents and work papers."

Under 5 U.S.C. § 552(b)(5), "inter-agency or intra-agency memorandums or letters which would not be available by law to a party...in litigation with the agency" are exempt from disclosure. Exemption 5 encompasses both statutory privileges and those commonly recognized by case law. In this case, the materials you requested were withheld under Exemption 5 on the basis that they fell within the scope of the deliberative process privilege because they were draft documents.

On January 21, 2009, President Obama released a FOIA memorandum in which he stated that "the Freedom of Information Act should be administered with a clear presumption: In the face of doubt, openness prevails." This reflected a new approach for the federal government in response to FOIA requests.

On March 19, 2009, the Office of the Attorney General released a memorandum for the heads of executive departments and agencies that provided further guidance regarding the President's stance, and encouraged agencies to make discretionary disclosures of information.


The standard for withholding information is to only do so when there is a reasonably foreseeable harm that could result from the release of the information.

I have considered the information you have requested and determine that there is no harm that can be reasonably foreseen to result from its release. Accordingly, the documents are being released to you in their original (unredacted) form.

Additionally, as you may know, the final report in this investigation is now available on the internet and may be found at:

<http://www.epa.gov/reports/2010/20100414-10-P-0100.pdf>

Sincerely,


for

Mark Bialek
Associate Deputy Inspector General and
Counsel