



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

NOV 12 2009

OFFICE OF
GENERAL COUNSEL

David B. McCoy
Citizen Action New Mexico
P.O. Box 4276
Albuquerque, NM 87196-00002-10

Re: Freedom of Information Act Appeal 06-RIN-00396-09

Dear Mr. McCoy:

I am responding to your Freedom of Information Act ("FOIA") appeal that was received on August 17, 2009. You appealed the July 20, 2009 decision of Lynda F. Carroll, Assistant Regional Administrator for Management Division ("decision"), of the U.S. Environmental Protection Agency ("EPA" or "Agency"). Your request again sought copies of "the review(s) or report(s) that were prepared by EPA Region 6 staff (Richard Mayer and others on his team) in response to a complaint that was filed with EPA Region 6 about the defective monitoring well network at Sandia National Laboratories' Mixed Waste Landfill." The decision stated that you had already requested these documents in your December 7, 2007 FOIA request; that Region 6 responded to your initial request on January 24, 2008; that you appealed Region 6's response on February 15, 2008; and that I upheld the portion of Region 6's response denying your appeal as to the withheld documents that were exempt from disclosure under Exemption 5 of the FOIA, 5 U.S.C. § 552(b)(5), in my August 7, 2008 decision.

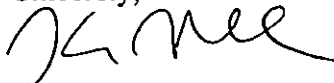
I have carefully considered your request, EPA's decision, and your appeal. The August 7, 2008 decision continues to apply to requests for information that you have previously requested. As explained in my August 7, 2008 decision, the documents you requested are exempt from disclosure under Exemption 5 of the FOIA, 5 U.S.C. § 552(b)(5), and the program has decided not to exercise its discretion to release the information because there is a reasonable likelihood that the Agency would be harmed by release. Therefore, I have determined that your appeal should be, and is, denied.

This letter constitutes EPA's final determination on this matter. Pursuant to 5 U.S.C. 552(a)(4)(B), you may obtain judicial review of this determination by filing a complaint in the United States District Court for the district in which you reside or have your principal place of business, or the district in which the records are situated, or in the District of Columbia.

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Should you have any questions regarding this matter, please call Dan Schulson at 202-564-3035.

Sincerely,

A handwritten signature in dark ink, appearing to read 'K. Miller', written over a horizontal dashed line.

Kevin M. Miller
Assistant General Counsel
General Law Office

cc: HQ FOI Office