



Society of Environmental Journalists

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June 26, 2019

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The Honorable Andrew Wheeler
Office of the Administrator
Environmental Protection Agency
1200 Pennsylvania Avenue, N.W. Mail Code: 1101A
Washington, DC 20460
wheeler.andrew@epa.gov

Dear Administrator Wheeler:

The Society of Environmental Journalists (SEJ) objects to EPA's June 26 Final Rulemaking entitled "Freedom of Information Act Regulations Update." It enables the agency to limit public access to EPA records that are legally public information. Moreover, the highly irregular procedure of issuing a final rule without proposal or public comments is unjustified and unlawful under the Administrative Procedure Act (APA).

SEJ is a professional and educational organization that represents 1,400 environmental journalists, professors and students. Our members, on behalf of the public, rely on FOIA to help the public understand the work of the U.S. Environmental Protection Agency. We are deeply concerned that the published FOIA rule changes will seriously harm the public's right to know.

Your claim to exempt this rulemaking from normal APA proposal-and-comment procedures is highly unusual and unwarranted. Moreover, we believe that it serves only to shield highly political decisions from public scrutiny. Neither the procedural nor the good cause exemptions to the APA apply to important parts of this rulemaking — which go beyond required updates to the regulation to drastically change EPA's handling of information requests. We strongly disagree with EPA's assertion that public discussion of this rulemaking is "impracticable, unnecessary, or contrary to the public interest." Circumventing the usual public comment process is a violation of the public trust and silences the voices of the citizens the EPA is bound to protect.

One of the rule's most worrisome changes grants authority to the Administrator (and a hierarchy of other political appointees) to determine which records are "responsive" to a FOIA request. This determination takes place entirely before the records are reviewed or redacted for legitimate FOIA exemptions. It is arbitrary and invisible, and virtually impossible to appeal, because the agency need not disclose to the requester what records were initially found or why they were deemed non-responsive. This provision badly distorts the true and proper meaning, under FOIA, of "responsiveness."

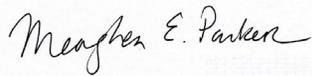
Another disturbing change centralizes final authority to grant or deny FOIA requests in the political parts of EPA headquarters. By altogether removing the authority of Regional Offices to grant FOIA requests, this change will slow and hobble the agency's already poor performance, in addition to politicizing the decision-making process.

The rule furthermore tries to legitimize the placement of the National FOIA Office under the Office of General Counsel. This is contrary to recent statutory changes, which emphasize the independence of the agency's Chief FOIA Officers.

Many of our members report that EPA's lack of speedy handling of, and responsiveness to, FOIA requests already makes it difficult for them to do their job of informing the public about the environment in which they live. This new rule, we believe, will make that job even more difficult. It will impede the public's access to environmental information and its right to know how tax dollars are spent.

We call on you to withdraw this rule and submit it for standard notice and comment as a proposal — thereby allowing a proper, meaningful public evaluation of its consequences.

Sincerely,

A handwritten signature in black ink that reads "Meaghan E. Parker". The signature is written in a cursive style and is positioned above a light gray rectangular background.

Meaghan E. Parker
Executive Director

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