

March 7, 2025

VIA ELECTRONIC DELIVERY

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Re: **FREEDOM OF INFORMATION ACT REQUEST**
Expedited Processing and Fee Waiver Requested

Communication between EPA and nonprofit officials concerning grants

To Whom It May Concern:

This is a Freedom of Information Act Request (FOIA) under 5 U.S.C. § 552 *et seq.* and 40 C.F.R. § 2.100 *et seq.* relating to communications between Environmental Protection Agency (“EPA” or “Agency”) officials and officials at nonprofits that receive substantial federal grants.

In 2024, the EPA awarded billions of dollars’ worth of grants to nonprofit organizations. Many of these nonprofits are relatively new organizations. Additionally, many of these nonprofits are run by officials who have served in government roles previously, including in the Biden Administration.

I. Records Requested

Landmark Legal Foundation (“Landmark”) seeks disclosure of the following records from **January 1, 2024**, through **January 20, 2025**, relating to:

1. Written or virtual communications between EPA officials, officials from the EPA Office of Grants and Debarment (OGD), and senior officials from the **Climate United Fund**, including Elizabeth Bafford, Phillip Angelides, Anthony Foxx, Derek Strocher, and Patrice Willoughby regarding a \$6.97 billion EPA grant.
 - a. Period of performance beginning March 1, 2024.
 - b. Prime Award ID: 84094001.
 - c. Please include a copy of any grant application and/or cover letter associated with this award.
2. Written or virtual communications between EPA officials, officials from the EPA OGD, and senior officials from the **Coalition for Green Capital**, including Jahi Wise, Hugh Frater, Ceilia Martinez, Stephen Brown, Jessica Buendia, and Elisha Hopson regarding a \$5.00 billion EPA grant.
 - a. Period of performance beginning March 1, 2024.
 - b. Prime Award ID: 84094201.
 - c. Please include a copy of any grant application and/or cover letter associated with this award.
3. Written or virtual communications between EPA officials, officials from the EPA OGD, and senior officials from **Power Forward Communities, Inc.**, including Timothy Mayopoulous, Shaun Donovan, Ari Matusiak, and Jonathan Reckford regarding a \$2.00 billion EPA grant.
 - a. Period of performance beginning March 1, 2024.
 - b. Prime Award ID: 84096001.
 - c. Please include a copy of any grant application and/or cover letter associated with this award.
4. Written or virtual communications between EPA officials, officials from the EPA OGD, and senior officials from the **Justice Climate Fund, Inc.**, including Amir Kirkwood, Jeannine Jacokes, Lenwood Long, and Peter Upton regarding a \$940 million EPA grant.
 - a. Period of performance beginning March 1, 2024.
 - b. Prime Award ID: 84094101.
 - c. Please include a copy of any grant application and/or cover letter associated with this award.
5. Written or virtual communications between EPA officials, officials from the EPA OGD, and senior officials from **Inclusiv, Inc.**, including Robin Romano, Blanche Jackson, Eben Sheaffer, and Nereida Seda Vargas regarding a \$1.87 billion EPA grant.

- a. Period of performance beginning March 1, 2024.
- b. Prime Award ID: 84094301.
- c. Please include a copy of any grant application and/or cover letter associated with this award.

II. Fee Waiver & Expedited Processing

Landmark seeks a fee waiver and expedited processing of this request.

A. Landmark's Request Should Receive a Fee Waiver

Agency regulations allow for a waiver or reduction of FOIA fees. 40 C.F.R. § 2.107(n). Requesters must show:

- (i) Disclosure of the requested 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
- (ii) Disclosure of the information is not primarily in the commercial interest of the requester.

40 C.F.R. § 2.107(n)(4). As shown below, Landmark satisfies each of these factors.

1. Disclosure of requested records will contribute significantly to public understanding of government operations or activities.

The process by which the EPA awards grants lacks transparency and individual accountability. In 2024, the EPA awarded thousands of grants, costing billions of dollars, to help achieve the agency's overall mission: "protect human health and environment." U.S. Env't Prot. Agency, *Our Mission and What We Do*, <https://www.epa.gov/aboutepa/our-mission-and-what-we-do> (last visited Feb. 24, 2025). Federal regulations mandate agencies "announce funding opportunities for Federal financial assistance that will be openly competed." 2 C.F.R. § 200.204. Once a monetary award is granted, federal regulations additionally specify that all relevant information is published on USAspending.gov. 2 C.F.R. § 200.212.

Under federal regulations, the EPA must "execute a merit review process of applications for discretionary Federal awards." 2 C.F.R. § 200.205. The EPA is not, however, required to publicize any communications between EPA officials and nonprofit organization officials. Disclosure of these communications will increase transparency in the deliberation and decision-making process.

The EPA distributes grants using funds appropriated to them by Congress; these funds are taxpayer dollars. American citizens deserve to have full transparency in federal grant distribution—the requested records will illuminate this process to the public.

Along with Agency regulations, FOIA requires the Agency to waive fees when disclosure of the requested record is in the public interest. 5 U.S.C. § 552(a)(4)(A)(iii);

Cause of Action v. FTC, 799 F.3d 1108 (D.C. Cir. 2015). Further, the “amended statute ‘is to be liberally construed in favor of waivers for noncommercial requesters.’” *McClellan Ecological Seepage Situation v. Carlucci* 835 F.2d 1282, 1284 (9th Cir. 1987) (quoting 132 Cong. Rec. S14298 (Sept. 30, 1986) (Sen. Leahy)). Senator Leahy then explained that the 1986 amendment's purpose was “to remove the roadblocks and technicalities which have been used by various federal agencies to deny waiver or reduction of fees under FOIA.” 132 Cong. Rec. S16496 (Oct. 15, 1986).

EPA regulations set forth factors to determine whether the release of requested records is in the public interest. Landmark satisfies each of these factors.

a. Whether the subject of the requested records concerns “the operations or activities of the government.”

This factor concerns the subject of the request. 40 C.F.R. § 2.107(n)(5)(i). Landmark seeks government records relating to the EPA’s grant allocation process, and communications that may occur between the Agency and related parties during this process. The requested records concern operations and activities of the EPA and by extension, the government.

b. Whether the disclosure is “likely to contribute to an understanding of government operations or activities.”

This factor concerns the informative value of the information to be disclosed. 40 C.F.R. § 2.107(n)(5)(ii). The disclosure of the requested records will contribute to the public’s knowledge of the details of the federal grant allocation process, and the extent to which EPA federal financial assistance is openly competed and merit based. EPA has not made public the specific information Landmark requests. The disclosure of these communications will help clarify government activities that are not conducted in public view. This would no doubt contribute to an understanding of government operations.

c. Whether disclosure of the requested information will contribute to “public understanding.”

This factor concerns the contribution to an understanding of the subject by the public likely to result from disclosure. 40 C.F.R. § 2.107(n)(5)(iii). The disclosure of the requested records will contribute to the public understanding of EPA’s operation through Landmark’s published works. Landmark has a long record of educating the public by disseminating information gathered through FOIA requests.

Upon receipt of this information, Landmark will promptly analyze and share the requested material. Landmark will take several steps to ensure that the public has access to the information, thus ensuring that the information will contribute to the "public understanding" of the Agency’s operations and activities:

- (i) Landmark will post responsive information on its website (www.landmarklegal.org), which is accessed regularly by thousands of individuals and offers the information to potentially millions of citizens;
- (ii) Landmark will use its extensive contacts in radio broadcasting to ensure proper public dissemination of requested records;
- (iii) Landmark will disseminate the information via its widespread distribution technology, which reaches hundreds of media outlets, reporters, editorial writers, commentators, and public policy organizations;
- (iv) Landmark staff will use the information to publish articles in print and online media, many of which are widely circulated. Landmark has successfully published numerous articles in the past;
- (v) Landmark will issue press releases to specific media outlets;
- (vi) Landmark staff will appear on television and radio programs.

Landmark has a proven record of ensuring that information it receives under FOIA requests garners widespread attention. Landmark's investigations have been cited by the *Associated Press*, *The Wall Street Journal*, *The Washington Post*, *The Washington Times*, and the Fox News Channel.

Landmark's attorneys are regular guests on radio shows throughout the country. Editorials written by Landmark personnel are featured in publications such as *The Hill*, *The Federalist*, *The Daily Wire*, *MSN*, *RealClearPolicy*, and the *Dallas Morning News*.

d. Whether the disclosure is likely to contribute "significantly" to public understanding of government operations or activities.

This factor concerns the significance of the contribution to public understanding. 40 C.F.R. § 2.107(n)(5)(iv). The disclosure of the requested records will contribute significantly to the public understanding of EPA's grant allocation operations and activities. The release of communications between EPA officials and top officials at nonprofits that receive substantial federal grants would significantly increase Agency transparency and public understanding of government activities not conducted in public view.

Landmark satisfies each of these factors.

2. Disclosure of requested records is not in Landmark's commercial interest.

To grant a fee waiver, the disclosure of the requested material must not be primarily in the commercial interest of the requester. 40 C.F.R. § 2.107(n)(4)(ii). Landmark does not have any commercial interest in the release of the requested

records. Obtaining, analyzing, and disseminating this information is in accordance with Landmark's mission to educate the public about the operations and activities of federal agencies. Landmark has no commercial interest of any kind, nor can it as a 501(c)(3) public interest nonprofit organization.

Landmark satisfies all factors of 40 C.F.R. § 2.107(n)(4), so a fee waiver should be granted.

B. Landmark's Request Should Receive Expedited Processing

Under Agency regulations, requests may be taken out of order and given expedited treatment. 40 C.F.R. § 2.104(g)(1). To receive expedited treatment, FOIA requests must show that such requests or appeals involve a compelling need. A compelling need is defined as either:

- (i) Circumstances in which the lack of expedited treatment could reasonably be expected to pose an imminent threat to the life or physical safety of an individual; or
- (ii) An 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.

40 C.F.R. § 2.104(g)(1)(i). As shown below, Landmark meets the second factor for expedited processing.

1. Urgency to Inform

a. There is a compelling need for prompt public disclosure of the requested records.

There is a compelling need for the immediate release of the information requested. There are legitimate questions about the grant distribution process concerning access to funds, fair competition, and conflicts of interest. Indeed, recent EPA reports suggest potential fraud, severe misconduct, and excessive waste. Letter from W.C. McIntosh, Acting Deputy Administrator, U.S. Env't Prot. Agency, to Nicole N. Murley, Acting Inspector General, U.S. Env't Prot. Agency (Mar. 2, 2025).

As for entities "primarily engaged in disseminating information," a compelling need is shown by an "urgency to inform the public concerning actual or alleged Federal Government activity" under FOIA. 5 U.S.C. Section 552(a)(6)(E)(v)(II). The EPA grant process is a topic of significant current national interest; EPA administrators are currently working to cut funding from several large grants awarded under the Biden Administration. Additionally, the EPA Inspector General, Department of Justice (DOJ,) and Federal Bureau of Investigation (FBI) are conducting ongoing investigations into financial mismanagement within the EPA

grant process. Letter from W.C. McIntosh, Acting Deputy Administrator, U.S. Env't Prot. Agency, to Nicole N. Murley, Acting Inspector General, U.S. Env't Prot. Agency (Mar. 2, 2025); *See also* Spencer S. Hsu et al., *FBI takes up EPA probe amid pushback from judge, prosecutors*, Wash. Post (Feb. 27, 2025), <https://www.washingtonpost.com/dc-md-va/2025/02/27/trump-fbi-epa-grant-investigation/>. These investigations necessarily concern “actual or alleged Federal Government activity,” and Landmark has a compelling need to inform the public about these actions. 5 U.S.C. Section 552(a)(6)(E)(v)(II).

b. Landmark is primarily engaged in disseminating information.

As part of its mission as a tax-exempt, public-interest law firm, Landmark investigates, litigates, and *publicizes* instances of improper and illegal government activity. As stated above, Landmark will take various steps to disseminate response information to the public. Landmark will post information on its website, include the information in its newsletters, disseminate information via various widespread distribution technologies, publish articles in large circulation print media, and issue press releases to a wide range of media outlets.

Moreover, Landmark’s work is regularly reported on via national print, broadcast, and electronic media outlets; these include *The Washington Post*, *The Washington Times*, *The New York Times*, *The Wall Street Journal*, and many other national publications. Landmark’s work is often discussed on national radio talk shows. Landmark’s purpose in seeking information is also to disseminate such information to the public.

Landmark has thousands of supporters throughout the United States who are regularly informed through newsletters and other correspondence. Landmark exists only through the donations received from the public and does not accept any government funds. As a result, Landmark must disseminate information about its activities to the public to function.

In *Elec. Privacy Info. Ctr. v. DOD*, 241 F.Supp. 2d 5 (D.D.C. 2003), the D.C. District Court found that a public interest group was “primarily engaged in disseminating information” for the purposes of FOIA. The court reasoned that the group “gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw material into a distinct work, and distributes that work to an audience.” *Elec. Privacy Info. Ctr. v. DOD*, 241 F.Supp. 2d 5, 11 (D.D.C. 2003) (citing *Nat’l Sec. Archive v. U.S. Dep’t of Def.*, 279 U.S. App. D.C. 308, 880 F.2d 1381, 1387 (1989)).

Landmark gathers information of potential interest to the public, analyzes the information, and then creates a report or summary of that information which it distributes to Landmark’s audience through newsletters, reports, and its webpage. Landmark’s audience includes its supporters, official advisors, news media, visitors

to its website, and the public when Landmark officials discuss the information in print, television, and radio.

Landmark meets both conditions necessary to establish an urgency to inform. This qualifies Landmark's request as having a compelling need, and therefore Landmark's request should receive expedited processing.

III. Conclusion

If you intend to deny this request in whole or in part, Landmark requests that you provide specific and substantive justifications with full citation to applicable exemptions and supporting case law.

Please note, while Landmark realizes that EPA considers requests for fee waivers case-by-case, Landmark has successfully litigated whether it qualifies for a fee waiver in federal court. You may contact Michael J. O'Neill at (703) 554-6105 or via email at mike@landmarklegal.org if you have any questions. Please deliver responsive records to Mr. O'Neill's attention at the following address:

Michael J. O'Neill
 Landmark Legal Foundation
 19415 Deerfield Ave.
 Suite 312
 Leesburg, VA 20176

Electronic copies of responsive records can be delivered via email to Mr. O'Neill's email address as well.

Please produce records on a rolling basis as they become available for disclosure.

Thank you for your attention to this matter.

IV. Certification

Under Agency regulations and as required by law, I certify, to the best of my knowledge and belief, that the above facts are true and correct.

03/07/2025

3/7/2025
 Date


 Michael J. O'Neill

Vice President of Legal Affairs
Landmark Legal Foundation