



December 6, 2013

Fax: (703) 292-9041
E-mail: foia@nsf.gov

Re: Freedom of Information Act Request; Expedited Processing Requested

Dear Sir/Madam:

Pursuant to the Freedom of Information Act (5 U.S.C. § 552, *et seq.*), and the regulations thereunder, I am writing on behalf of the Competitive Enterprise Institute (CEI), a non-profit 501(c)(3) public-interest group, to request access to and copies of the following documents related to a National Science Foundation Memorandum and the inquiry that led to it. That document was the Office of Inspector General Office of Investigations, *Closeout Memorandum*, Case Number A09120086, probably dated around August 15, 2011 (which at the time of this request was posted at <http://www.nsf.gov/oig/search/A09120086.pdf>). The documents I seek include:

1. Any documents dated or created after November 16, 2009 and before August 31, 2011, concerning the "critics" or "disciplinary experts" cited on page 3 of that memorandum, or concerning or discussing any interview or communications with them.
2. The "publicly available documentation" cited on page 2 of that memorandum.
3. Any documents specifying or listing the author or authors of that memorandum.
4. Any documents dated or created after November 16, 2009 and before August 31, 2011 concerning or discussing any alleged data falsification, data tampering, research misconduct, or scientific or other misconduct by Michael Mann.
5. Any documents dated or created after November 16, 2009 and before August 31, 2011, concerning, discussing, or communicating with Steve McIntyre or Stephen McIntyre or Ross McKittrick, or Richard Lindzen.
6. Any documents dated or created after November 16, 2009 and before August 31, 2011 concerning or discussing David Verardo, William Easterling, or Eugene Wahl which discuss or mention either (a) any communication or relation or connection or

collaboration on their part with Michael Mann, or (b) any investigation or allegation of data falsification or data tampering or data deletion or research misconduct or scientific misconduct .

7. Any documents dated or created after November 16, 2009 and before August 31, 2011, regarding (a) any document destruction, tampering, or deletion by Eugene Wahl or David Verardo, or (b) any allegations of document destruction, tampering, or deletion, by Eugene Wahl or David Verardo.
8. Any documents dated or created after November 16, 2009 and before August 31, 2011 concerning or discussing Michael Mann.
9. Any documents dated or created after November 16, 2009 and before February 28, 2011, concerning any National Oceanic and Atmospheric Administration or Department of Commerce investigation regarding Michael Mann or Eugene Wahl.
10. Any documents concerning any investigation of Mann by Pennsylvania State University for data falsification or data tampering or research misconduct or scientific misconduct.
11. Any records which (a) were sent to or by or copied to NSF employee David Verardo; (including those cc:d to Verardo by NSF's general counsel); (b) which cite or reference or communicate with Michael Mann; and (c) were dated or created between January 1, 2003 and December 31, 2003.

Please provide the documents in electronic form (except for documents that do not exist in electronic form), unless it would be cheaper to obtain paper copies.

We request that your office waive charges pursuant to 5 U.S.C. § 552(a)(4)(iii) & 45 C.F.R. 612.10(d)(1)&(k)(1), since, as is explained below, disclosure 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 requestor.

Even if you do not waive the charges pursuant to those provisions, we request in the alternative that your office waive charges for the first 100 pages and first two hours of search time.¹

We request this on the basis that CEI is a nonprofit, tax-exempt, public-interest organization, with formal research, educational, and publication functions as part of its mission, and because release of these records will serve the public interest by contributing significantly to the public's understanding of government operations, the shaping of public policy, and how taxpayer money is spent.² This FOIA request is not for commercial use.³

¹ See, e.g., 45 C.F.R. 612.10(d)(2).

² See, e.g., 45 C.F.R. 612.10(d)(1) (providing for fee waivers for Educational and non-commercial scientific institution requesters), 45 C.F.R. 612.10(k)(1).

³ Nor would it primarily further or advance any commercial interest. Also, CEI is not a trade association.

In the past, CEI FOIA requests have generated data and other useful information that was of interest to the public, information featured in news articles and commentary.⁴

If our fee waiver is denied, we are willing to pay up to \$100.00, and in the event of any appeal as appropriate and regardless of that outcome or your response to this fee waiver request, we request the search and document production proceed in the interim. (If there are any such charges, please provide an invoice for the time incurred and cost for each document for which more than \$15.00 is sought).

CEI's interest in the documents springs from its efforts to educate the public, scholars, and state and federal regulators on matters of government operations,⁵ including issues related to climate-change policy and regulation.⁶

⁴ See, e.g., Stephen Dinan, *Do Text Messages from Feds Belong on Record? EPA's Chief's Case Opens Legal Battle*, Washington Times, April 30, 2011, at A1 (news coverage based on documents obtained by CEI's "Christopher Horner"); Stephen Dinan, *EPA Staff to Retrain on Open Records; Memo Suggests Breach of Policy*, Washington Times, April 9, 2013, at A4 (EPA stepped up records-management training based on "admission" that some staff had "fallen short" on complying with EPA rules, a practice uncovered by CEI); Stephen Dinan, *Suit Says EPA Balks at Release of Records; Seeks Evidence of Hidden Messages*, Washington Times, April 2, 2013, at A1 (discussing how CEI's Horner had "uncovered that" regional official was "using private email addresses to conduct official business" in violation of EPA guidance).

Data and other useful information obtained by CEI employees through FOIA requests ends up in editorials, news coverage, and Congressional testimony. See, e.g., Trey Kovacs & Alex Habighorst, *Time for an Official End to Federal Employee Union Subsidies*, Washington Examiner, June 5, 2013, <http://washingtonexaminer.com/op-ed-time-for-an-official-end-to-federal-employee-union-subsidies/article/2531217> (Op-ed by CEI staff citing documents obtained by CEI employee Kovacs in his FOIA requests); *Written Statement of Hans Bader, Senior Attorney, Competitive Enterprise Institute, U.S. House of Representatives Committee on Oversight and Government Reform, Subcommittee on Regulatory Affairs, Hearing Entitled Lasting Implications of the General Motors Bailout*, June 22, 2011, <http://www.scribd.com/doc/58462911/Hans-Bader-Statement-for-Regulatory-Affairs-Subcommittee> (Testimony to Congress quoting information found in documents obtained by CEI FOIA request).

⁵ CEI is widely quoted in the press and other publications. See, e.g., George Will, *Obama's Speech Police*, Washington Post, May 26, 2013, at A17 (quoting CEI's Hans Bader) (available in Westlaw at 2013 WLNR 12921146); Cathy Young, *Yet Another Governmental Overreach*, Newsday, May 28, 2013 (same); Ramesh Ponnuru, *Colleges: New Sexual Harassment Rules Defy Reason*, St. Paul Pioneer-Press, July 24, 2013, at A14 (same) (2013 WLNR 18241796); *Yet Another Federal Attack on Civil Liberties*, Cincinnati Enquirer, May 26, 2013, at F5 (same); JulieAnn McKellogg, *US Supreme Court Hears Massive Wal Mart Discrimination Case*, Voice of America, March 29, 2011 (same); Al Neuharth, *Why Bail Out Bosses Who Messed It Up*, USA Today, Nov. 21, 2008, at 23A (quoting CEI) (available at 2008 WLNR 22235170); Bill Shea, *Agency Looks Beyond Criticism of Ads of GM Boasting About Repaid Loan*, Crain's Detroit Business, May 17, 2010, at 3 (available in Westlaw) (citing CEI); William P. Hoar, *Bailing Out Scam Artists*, New American, October 13, 2008, at pg. 42 (quoting CEI's Bader); Mark Tapscott, *GM Named in Deceptive Advertising Complaint Filed With FTC*, Washington Examiner, May 4, 2010 (same); Carrie Lynn Flores, *Translation Services Not Required: The Civil Rights Act of 1964 Does Not Require Special Accommodations for Limited English Proficiency Individuals*, 15 Harvard Latino Law Review 193, 198 fn. 24 (2011) (same); Carter T. Coker,

The general and policy-oriented public will benefit from the dissemination of the information requested, since CEI's professionals are widely-published about these subjects.⁷

CEI publishes about these and other issues in print and electronic media, as well as newsletters to legislators, education professionals, and other interested parties, and thus qualifies as a press entity for purposes of FOIA.⁸ Those activities are in fulfillment of CEI's mission. The

Hope-Fulfilling or Effectively Chilling? Reconciling the Hate Crimes Prevention Act With the First Amendment, 64 Vanderbilt Law Review 271, 283 fn. 73, 289 fn.103 & 106, 209 fn. 106 (2011) (same).

⁶ See, e.g., CEI's blog *Globalwarming.Org*; Hal Davis, *Earth's Temperature Is Rising and So Is Debate About It*, Dayton Daily News, April 22, 2006, at A6 (citing CEI's *GlobalWarming.Org*); Washington Examiner, August 14, 2008, pg. 24, *Think-Tanking* (reprinting relevant commentary from CEI); Mark Landsbaum, *Blogwatch: Biofuel Follies*, Orange County Register, Nov. 13, 2007 (citing CEI) (available in Westlaw news database at 2007 WLNR 23059349); Pittsburgh Tribune-Review, *Best of the Blogs*, Oct. 7, 2007 (citing CEI) (available at 2007 WLNR 19666326); See, e.g., Bruce Yandle, *Bootleggers, Baptists, and the Global Warming Battle*, 26 Harvard Environmental Law Review 177, 221 & fn. 272 (2002) (citing CEI's *GlobalWarming.Org*); Deepa Badrinarayana, *The Emerging Constitutional Challenge of Climate Change: India in Perspective*, 19 Forham Environmental Law Review 1, 22 & fn. 119 (2009) (same); Kim Diana Connolly, *Bridging the Divide: Examining the Role of the Public Trust in Protecting Coastal and Wetland Resources*, 15 Southeastern Environmental Law Journal 1, 15 & fn. 127 (2006) (same); David Vanderzwaag, et al., *The Arctic Environmental Protection Strategy, Arctic Council, and Multilateral Environmental Initiatives*, 30 Denver Journal of International Law and Policy 131, 141 & fn. 79 (2002) (same).

⁷ For example, the author of this letter routinely writes about government operations and positions taken by government agencies. See, e.g., Bader, *Tip of the Healthcare.Gov Iceberg*, CNS News, Oct. 28, 2013 (<http://cnsnews.com/commentary/hans-bader/tip-healthcaregov-iceberg>); *Obama White House Closing Private Businesses to Add Pain to Government Shutdown*, Washington Examiner, Oct. 5, 2013 (<http://washingtonexaminer.com/obama-white-house-closing-private-businesses-to-add-pain-to-government-shutdown/article/2536820>); *Getting the History of the Voting Rights Act Right*, Washington Post, May 1, 2013, (http://www.washingtonpost.com/opinions/getting-the-history-of-the-voting-rights-act-right/2013/05/01/1d18328c-b04f-11e2-9fb1-62de9581c946_story.html); *When the First Amendment Is Repealed by Bureaucrats*, Wall Street Journal, May 24, 2013, at A12 (<http://online.wsj.com/article/SB10001424127887324787004578497454237999618.html>); *Race Has No Place in Gun-Law Debate*, Philadelphia Daily News, April 8, 2013 (http://articles.philly.com/2013-04-09/news/38376549_1_nutter-gun-mental-health); *Frum Wrong About Budget Cuts*, National Post, Feb. 12, 2013; *Free Speech Isn't Harassment*, Washington Times, May 23, 2013 (www.washingtontimes.com/news/2013/may/23/free-speech-isnt-harassment/); *Obamacare Quadruples Costs for Some*, CNS News, Oct. 1, 2013, (<http://cnsnews.com/commentary/hans-bader/obamacare-quadruples-costs-some-rewards-others-who-quit-working>); *EEOC Demands Imperil the Public*, Washington Times, Jan. 12, 2012, at B2; Letter, *Mr. Franken's Arbitration Amendment*, Washington Post, Oct. 29, 2009, at A18; *Unlawful to Favor Women-Owned Businesses*, Washington Times, Aug. 5, 2011, at B2; *Day Cares Can't Mandate Diversity*, Washington Times, July 19, 2011, at B2; Letter, *Murphy Twists Facts in Title IX Column*, Patriot-Ledger, April 15, 2011, at 6; Letter, *The Case Against Racial Balancing Schemes*, Washington Post, Dec. 8, 2006, at A38; Letter, *Fair Means Fair; Evidence Must Count for Something*, Wall Street Journal, July 21, 2011, at A16; JulieAnn McKellogg, *US Supreme Court Hears Massive Wal Mart Discrimination Case*, Voice of America, March 29, 2011.

⁸ See the attachment to this letter, an EPA letter granting CEI a waiver of fees under FOIA. See also 40 C.F.R. 2.107(c)(iii) (providing fee waivers for media requesters); *EPIC v. DOD*, 241 F.Supp.2d 5 (D.D.C. 2003) (publisher of bi-weekly electronic newsletter qualified as media under FOIA); *Forest Guardians v. U.S. Dept.*

information received will be disseminated through one or more of the following: a) newsletters, (b) opinion pieces in newspapers or magazines, (c) CEI's web sites and blogs which receive approximately 80,000 monthly visitors (approximately 40,000 unique) and are published on most days,⁹ (d) in-house publications for public dissemination, (e) other electronic journals including daily blogs and newspaper blogs to which our professionals contribute,¹⁰ (f) local and syndicated radio programs dedicated to discussing public policy, (g) to the extent that Congress or state legislators or administrative agencies engaged in relevant oversight find it noteworthy, it will become part of the public record of government deliberations. CEI is regularly cited in newspapers,¹¹ law reviews,¹² and legal and scholarly publications.¹³

As provided by FOIA, I look forward to hearing from you within twenty (20) days.¹⁴ If you deny this request, please provide a written explanation for the denial including a reference to the specific statutory exemption on which you are relying, and provide the name and address of the person or body to whom an appeal should be directed. Also, please provide all segregable or non-exempt portions of otherwise exempt material.

of Interior, 416 F.3d 1173 (10th Cir. 2005) (fee waiver for group that "aims to place the information on the Internet"; "Congress intended the courts to liberally construe the fee waiver" provisions).

⁹ See, e.g., www.openmarket.org (one of several blogs operated by CEI providing daily coverage of legal and regulatory issues); www.globalwarming.org (another CEI blog).

¹⁰ See, e.g., <http://www.examiner.com/scotus-in-washington-dc/hans-bader> (listing of about 1000 commentaries posted several times a week by CEI's Hans Bader at Examiner.com).

¹¹ See, e.g., Greg Victor, *Subsidizing Madness*, Pittsburgh Post-Gazette, March 27, 2011, at E4 (quoting CEI's Hans Bader); Mona Charen, Creators Syndicate, *You Might Suppose That President Obama Has His Hands . . .*, Bismarck Tribune, June 10, 2009, at A8 (quoting CEI's OpenMarket blog); Hal Davis, *Earth's Temperature Is Rising and So Is Debate About It*, Dayton Daily News, April 22, 2006, at A6 (citing CEI's GlobalWarming.Org); *Think-Tanking*, Washington Examiner, August 14, 2008, pg. 24 (quoting CEI's OpenMarket); Mark Landsbaum, *Blogwatch: Biofuel Follies*, Orange County Register, Nov. 13, 2007 (citing OpenMarket); Pittsburgh Tribune-Review, *Best of the Blogs*, Oct. 7, 2007 (citing CEI's OpenMarket).

¹² See, e.g., Carrie Lynn Flores, *Translation Services Not Required: The Civil Rights Act of 1964 Does Not Require Special Accommodations for Limited English Proficiency Individuals*, 15 Harvard Latino Law Review 193, 198 fn. 24 (2011) (citing Hans Bader of CEI); Carter T. Coker, *Hope-Fulfilling or Effectively Chilling? Reconciling the Hate Crimes Prevention Act With the First Amendment*, 64 Vanderbilt Law Review 271, 283 fn. 73, 289 fn.103 & 106, 209 fn. 106 (2011) (same); Robert Hardaway, *The Great American Housing Bubble*, 35 University of Dayton Law Review 33, 34 (2009) (same).

¹³ See, e.g., Bruce Yandle, *Bootleggers, Baptists, and the Global Warming Battle*, 26 Harvard Environmental Law Review 177, 221 & fn. 272 (citing CEI's GlobalWarming.Org); Deepa Badrinarayana, *The Emerging Constitutional Challenge of Climate Change: India in Perspective*, 19 Forham Environmental Law Review 1, 22 & fn. 119 (2009) (same); Kim Diana Connolly, *Bridging the Divide: Examining the Role of the Public Trust in Protecting Coastal and Wetland Resources*, 15 Southeastern Environmental Law Journal 1, 15 & fn. 127 (2006) (same); David Vanderzwaag, et al., *The Arctic Environmental Protection Strategy, Arctic Council, and Multilateral Environmental Initiatives*, 30 Denver Journal of International Law and Policy 131, 141 & fn. 79 (2002) (same); Bradley K. Krehely, *Government-Sponsored Enterprise: A Discussion of the Federal Subsidy of Fannie Mae and Freddie Mac*, 6 North Carolina Banking Institute 519, 527 (2002) (quoting CEI).

¹⁴ See 5 U.S.C. § 552(a)(6)(A)(i).

STATEMENT OF BASIS FOR EXPEDITED PROCESSING

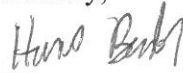
Pursuant to 5 U.S.C. § 552(a)(6)(E) and 45 C.F.R. 612.5(d), CEI also requests that the processing of this request be expedited in light of the compelling need for the requested information. CEI is a non-profit engaged primarily in disseminating information it gathers from a variety of sources, including the FOIA, and seeks the information requested in this FOIA request for the express purpose of disseminating it to the public. Information dissemination is the main professional activity of CEI, the main occupation of most of its staff, and one of the primary functions of the author of this letter.

As with other organizations that courts have found to satisfy the criteria necessary for expedition, CEI “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.”¹⁵

Moreover, there is an urgent need for the record sought, since the value of the records will be greatly reduced if the information is not disseminated quickly, and there is public concern about the subject of this FOIA request.¹⁶

The undersigned declares under penalty of perjury that the foregoing is true and correct to the best of my knowledge. Executed on December 6, 2013.

Sincerely,



Hans Bader
Senior Attorney
Competitive Enterprise Institute
1899 L Street, NW, 12th Floor
Washington, D.C. 20036
(202) 331-2278
hbader@cei.org

¹⁵ See *ACLU v. U.S. Dept. of Justice*, 321 F.Supp.2d 24, 30 (D.D.C. 2004); *EPIC v. Dept. of Defense*, 241 F.Supp.2d 5, 11 (D.D.C. 2003).

¹⁶ See, e.g., Christopher Booker, *Climate Change ‘Scientists’ Are Just Another Pressure Group*, London Sunday Telegraph, Oct. 6, 2013 (discussing the ongoing controversy over “the Climategate emails” related to this request); Gerald Warner, *Wind Farm Mania Driven by Environmental Myths*, Scottish Daily Mail, Sept. 23, 2013 (same); Patrick Reis, *GOP, Harvard, EPA Grapple Over Landmark Health Study*, National Journal, Sept. 12, 2013 (same).

Attachment to Hans Bader letter dated December 6, 2013



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

May 10, 2010

OFFICE OF
ENVIRONMENTAL INFORMATION

Mr. Hans Bader
Competitive Enterprise Institute
1899 L Street, NW, 12th Floor
Washington, DC 20036

RE: Request Number HQ-FOI-01223-10

Dear Mr. Bader:

This is in response to your request for a waiver of fees in connection with your Freedom of Information Act (FOIA), 5 U.S.C. 552 request. Your FOIA request is seeking a copy of records referred to as the Kerry-Graham-Lieberman climate bill and any attachments or exhibits.

We have reviewed your submission and based on the information you provided, we are granting your fee waiver request. The US Environmental Protection Agency (EPA) Office of Congressional and Intergovernmental Relations, within the Office of the Administrator, will be responding to your information request for the Agency.

If you have any questions concerning this determination, please contact me at (202) 566-1667.

Sincerely,

A handwritten signature in black ink, appearing to read "Larry F. Gottesman".

Larry F. Gottesman
National FOIA Officer

7

TX Result Report

P 1
 12/06/2013 15:06
 Serial No. AOP0011002295
 TC: 842588

Addressee	Start Time	Time	Prints	Result	Note
17032929041	12-06 15:04	00:01:47	007/007	OK	

Note

TMR: Timer TX, POL: Polling, ORG: Original Size Setting, FME: Frame Erase TX,
 MIX: Mixed Original TX, CALL: Manual TX, CSRC: CSRC, FWD: Forward, PC: PC-Fax,
 BND: Double-Sided Binding Direction, SP: Special Original, FCODE: F-code, RTX: Re-TX,
 RLY: Relay, MBX: Confidential, BUL: Bulletin, SIP: SIP Fax, IPADR: IP Address Fax,
 I-FAX: Internet Fax

Result OK: Communication OK, S-OK: Stop Communication, PW-OFF: Power Switch OFF,
 TEL: RX from TEL, NG: Other Error, Cont: Continue, No Ans: No Answer,
 Refuse: Receipt Refused, Busy: Busy, M-Full: Memory Full,
 LOVR: Receiving length Over, POVR: Receiving page Over, FIL: File Error,
 DC: Decode Error, MDN: MDN Response Error, DSN: DSN Response Error.



December 6, 2013

Fax: (703) 292-9041
 E-mail: foia@nsf.gov

Re: Freedom of Information Act Request; Expedited Processing Requested

Dear Sir/Madam:

Pursuant to the Freedom of Information Act (5 U.S.C. § 552, *et seq.*), and the regulations thereunder, I am writing on behalf of the Competitive Enterprise Institute (CEI), a non-profit 501(c)(3) public-interest group, to request access to and copies of the following documents related to a National Science Foundation Memorandum and the inquiry that led to it. That document was the Office of Inspector General Office of Investigations, *Closeout Memorandum*, Case Number A09120086, probably dated around August 15, 2011 (which at the time of this request was posted at <http://www.nsf.gov/oig/search/A09120086.pdf>). The documents I seek include:

1. Any documents dated or created after November 16, 2009 and before August 31, 2011, concerning the "critics" or "disciplinary experts" cited on page 3 of that memorandum, or concerning or discussing any interview or communications with them.
2. The "publicly available documentation" cited on page 2 of that memorandum.
3. Any documents specifying or listing the author or authors of that memorandum.
4. Any documents dated or created after November 16, 2009 and before August 31, 2011 concerning or discussing any alleged data falsification, data tampering, research misconduct, or scientific or other misconduct by Michael Mann.
5. Any documents dated or created after November 16, 2009 and before August 31, 2011, concerning, discussing, or communicating with Steve McIntyre or Stephen McIntyre or Ross McKittrick, or Richard Lindzen.
6. Any documents dated or created after November 16, 2009 and before August 31, 2011 concerning or discussing David Verardo, William Easterling, or Eugene Wahl which discuss or mention either (a) any communication or relation or connection or