



March 7, 2024

Via Email to [alexander.morris@hq.doe.gov](mailto:alexander.morris@hq.doe.gov)

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**Subject: FOIA HQ-2024-01160-F**

Reference: Letter from Alexander Morris to Phil Rutherford, "HQ-2024-01160-F", March 6, 2024

Dear Mr. Morris,

Thank you for your referenced interim letter reply to my FOIA HQ-2024-01160-F.

I note that your reply did not deny any of the specific document requests of my FOIA request. It did, however, mis-categorize my requester status, and deny my requests for fee waiver, and expedited processing. Please allow me to respond to each in turn.

**Requester Category**

Pursuant of 10 CFR 1004.9(b)(4) you have categorized the requester (me) as "other." I propose that I should be categorized as an educational and/or non-commercial scientific institution, pursuant of 10 CFR 1004.9(b)(2). Although my company does provide paid-for consulting services, it also provides free on-line educational/scientific resources in radiation safety, environmental radiological risk assessment and nuclear decommissioning.<sup>1</sup> Indeed, all material

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<sup>1</sup> <https://philrutherford.com/about.html>



on the subject OIG complaint, 23-0160-C,<sup>2</sup> has been freely available to the public on my website for the last year.<sup>3</sup>

### Waiver of Fees

10 CFR 1004.9(a)(8) states in part,

*“DOE will furnish documents without charge or at reduced charges if disclosure of the 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 disclosure is not primarily in the commercial interest of the requester. This fee waiver standard thus sets forth two basic requirements, both of which must be satisfied before fees will be waived or reduced. First it must be established that 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. Second, it must be established that disclosure of the information is not primarily in the commercial interest of the requester. When these requirements are satisfied, based upon information supplied by a requester or otherwise made known to DOE, the waiver or reduction of a FOIA fee will be granted.”*  
[Underlines added for emphasis]

I have no intent of making money out of the information I am requesting. On the contrary, my interest in the complaint investigation records is founded solely upon my belief that it is important for the public to be aware of the alleged falsification of radioactive waste manifests that is the subject of the original complaint.

Public interest in the disposition of DOE-owned building demolition debris from ETEC has been paramount since the 2020 Amendment to the Order on Consent,<sup>4,5</sup> whereby the California Department of Toxic Substances Control (DTSC) mandated that the federal DOE dispose of decommissioned material and building debris from buildings with no history of radiological use, to a LLRW disposal facility. This led to FOIA request EMCBC-2022-00149-F.<sup>6</sup> Review of shipping

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<sup>2</sup> [https://www.philrutherford.com/SSFL/doe\\_building\\_demolition/FOIA/DOE\\_IG\\_Letter\\_2023-02-10.pdf](https://www.philrutherford.com/SSFL/doe_building_demolition/FOIA/DOE_IG_Letter_2023-02-10.pdf)

<sup>3</sup> <https://www.philrutherford.com/ssfl.html#wastefoia>

<sup>4</sup> <https://philrutherford.com/ssfl.html#2020aoc>

<sup>5</sup> [https://www.philrutherford.com/Personal\\_Communication/Letter\\_to\\_Becker\\_2020-11-29.pdf](https://www.philrutherford.com/Personal_Communication/Letter_to_Becker_2020-11-29.pdf)

<sup>6</sup> [https://philrutherford.com/SSFL/doe\\_building\\_demolition/FOIA/DOE\\_FOIA\\_EMBCB-2022-00149-F.pdf](https://philrutherford.com/SSFL/doe_building_demolition/FOIA/DOE_FOIA_EMBCB-2022-00149-F.pdf)



records produced in response to EMCBC-2022-00149-F, highlighted numerous examples of falsified data, leading to a complaint to DOE ETEC management<sup>7</sup> followed by a complaint to the DOE OIG (23-0160-C).<sup>8</sup> The current FOIA request HQ-2024-01160-F<sup>9</sup> seeks the results of the OIG investigation.

Your interim letter states that,

*“The information you requested pertains to an operation or activity of the government. However, it is also required that that the information be disclosed to the public and contribute to the public understanding ... Your justification does not explain how you intend to disclose information to the public and what information from this request will contribute to a public understanding of government activities.”*

The detailed communication timeline of this search for the truth, including the on-line footnote citations provided, documents all interactions with DOE and other agencies.<sup>10</sup> This is how I have, and will, *“disclose the information to the public.”* The detailed critique of ETEC-generated shipping records,<sup>11</sup> plus the over one-year duration of this exercise, plus the so-far, lack of any meaningful response to my allegations, should *“contribute to a public understanding of government activities.”* Unfortunately, the only substantive statement from the DOE OIG in its February 8, 2024, email was, *“The OIG determined that no further action was warranted.”*<sup>12</sup> Until the DOE OIG provides records documenting its investigation of the complaint, the *“public understanding of government activities”* will likely be ... yet another cover-up.

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[https://www.philrutherford.com/SSFL/doe\\_building\\_demolition/FOIA/Response to FOIA Data Package Revised.pdf](https://www.philrutherford.com/SSFL/doe_building_demolition/FOIA/Response_to_FOIA_Data_Package_Revised.pdf)

<sup>8</sup> [https://www.philrutherford.com/SSFL/doe\\_building\\_demolition/FOIA/DOE IG Letter 2023-02-10.pdf](https://www.philrutherford.com/SSFL/doe_building_demolition/FOIA/DOE_IG_Letter_2023-02-10.pdf)

<sup>9</sup> [https://www.philrutherford.com/SSFL/doe\\_building\\_demolition/FOIA/2024-02-08 FOIA Request for File on OIG Complaint 23-0160-C.pdf](https://www.philrutherford.com/SSFL/doe_building_demolition/FOIA/2024-02-08_FOIA_Request_for_File_on_OIG_Complaint_23-0160-C.pdf)

<sup>10</sup> <https://www.philrutherford.com/ssfl.html#wastefoia>

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[https://www.philrutherford.com/SSFL/doe\\_building\\_demolition/FOIA/Response to FOIA Data Package Revised.pdf](https://www.philrutherford.com/SSFL/doe_building_demolition/FOIA/Response_to_FOIA_Data_Package_Revised.pdf)

<sup>12</sup> [https://www.philrutherford.com/SSFL/doe\\_building\\_demolition/FOIA/2024-02-08 RE Complaint 23-0160-C from OIG.pdf](https://www.philrutherford.com/SSFL/doe_building_demolition/FOIA/2024-02-08_RE_Complaint_23-0160-C_from_OIG.pdf)



Lastly, your issue over fee waivers seems to be inconsistent with the DOE response to my original FOIA request EMCBC-2022-0149-F.<sup>13</sup> Although the response took almost a full year, there was no debate about fees. The complete responsive data package<sup>14</sup> comprised 1,911 pages, many of which were partially redacted of PII, which would have required a significant expenditure of time. Clearly, your decision to debate fee waivers is somewhat arbitrary.

### **Expedited Processing**

U.S. Code 552(a)(6)(E)(v)(II) defines a “*compelling need*” exists if “*the requester is primarily engaged in disseminating information*” and there is an “*urgency to inform the public concerning actual or alleged Federal Government activity.*”

Casual perusal of my website, specifically federal operations at SSFL and ETEC clearly demonstrates that “*the requester is engaged in disseminating information.*”<sup>15</sup>

DOE ETEC management is committed to open and transparent communication with SSFL stakeholders.<sup>16</sup> Building demolition and disposal of the subject demolition wastes was conducted in 2020-2021 and drew extensive public attention.<sup>17</sup> Allegations of falsification of waste shipping records of building debris was disseminated to the public<sup>18</sup> and scientific community<sup>19</sup> in 2023.

The DOE OIG investigation of complaint 23-0160-C, was concluded an unknown number of months ago, with the conclusion that “*no further action is warranted.*” Logically, one would think that DOE, itself, would want the public to see how it disputes the specific allegations in

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<sup>13</sup> [https://www.philrutherford.com/SSFL/doe\\_building\\_demolition/FOIA/Response to EMCBC-2022-00149-F Received 2022-10-06.pdf](https://www.philrutherford.com/SSFL/doe_building_demolition/FOIA/Response_to EMCBC-2022-00149-F_Received_2022-10-06.pdf)

<sup>14</sup> [https://philrutherford.com/SSFL/doe\\_building\\_demolition/FOIA/Data Package/](https://philrutherford.com/SSFL/doe_building_demolition/FOIA/Data_Package/)

<sup>15</sup> <https://www.philrutherford.com/ssfl.html#prc>

<sup>16</sup> [https://content.govdelivery.com/accounts/USDOEOEM/bulletins/2fcee7f#link\\_8](https://content.govdelivery.com/accounts/USDOEOEM/bulletins/2fcee7f#link_8)

<sup>17</sup> <https://www.energy.gov/em/articles/crews-tearing-down-final-doe-buildings-energy-technology-engineering-center>

<sup>18</sup>

[https://www.philrutherford.com/SSFL/doe\\_building\\_demolition/FOIA/Response to FOIA Data Package Revised.pdf](https://www.philrutherford.com/SSFL/doe_building_demolition/FOIA/Response_to_FOIA_Data_Package_Revised.pdf)

<sup>19</sup>

[https://www.philrutherford.com/SSFL/doe\\_building\\_demolition/FOIA/Waste Characterization by DOE at ETEC PowerPoint.pdf](https://www.philrutherford.com/SSFL/doe_building_demolition/FOIA/Waste_Characterization_by_DOE_at_ETEC_PowerPoint.pdf)



complaint 23-0160-C. DOE, itself, should believe there is an “urgency to inform the public concerning actual or alleged Federal Government activity.”

I respectfully decline to submit an appeal for judicial review in the Federal District Court, and trust that you will consider the aforementioned arguments in implementing FOIA HQ-2024-01160-F.

Sincerely,

Phil Rutherford