

APPENDIX F

Sample Legal Documents

Sample Freedom of Information Act Request

July 12, 2000

FOI/Privacy Acts Section
Office of Public & Congressional Affairs
Federal Bureau of Investigation
9th & Constitution Ave., N.W.
Washington, DC 20535

Re: Freedom of Information Request

Dear Sir or Madam:

This letter constitutes a request under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, and is submitted on behalf of Electronic Privacy Information Center ("EPIC").

We request the release of all FBI records concerning the system known as "Carnivore" and a device known as "EtherPeek" for the interception and/or review of electronic mail (e-mail) messages.

For purposes of FOIA fee assessments, we request that EPIC be placed in the category of "news media" requester. The organization publishes a weekly electronic newsletter that is available to the general public, and any information obtained as a result of this request will be disseminated through that publication. We note that other agencies have recognized that EPIC qualifies for "news media" status. We also request a waiver of all processing fees, as release of this information will contribute significantly to the public's understanding of the activities and operations of the government.

As the FOIA requires, I will look forward to your response within twenty (20) working days.

Thank you.

Sincerely,

David L. Sobel
General Counsel
Electronic Privacy Information Center

Sample Request for Expedited Processing

July 18, 2000

BY MESSENGER DELIVERY

Myron Marlin
Director of Public Affairs
Office of Public Affairs
U.S. Department of Justice
Room 1128
950 Pennsylvania Avenue, NW.
Washington DC 20530-0001

REQUEST FOR EXPEDITED FOIA PROCESSING

Dear Mr. Marlin:

This is a request for expedited processing of a Freedom of Information Act ("FOIA") request, made pursuant to 28 CFR 16.5(d)(1). On July 12, 2000, I submitted an FOIA request (copy attached) to the Federal Bureau of Investigation ("FBI") seeking the disclosure of "all FBI records concerning the system known as 'Carnivore' and a device known as 'EtherPeek' for the interception and/or review of electronic mail (e-mail) messages."

I believe this request meets the criteria for expedited processing under 28 CFR 16.5(d)(1)(iv), as "[a] matter of widespread and exceptional media interest in which there exist possible questions about the government's integrity which affect public confidence." 28 CFR 16.5(d)(1)(iv).

Through use of the Carnivore system, the FBI reportedly obtains a vast amount of private communications, far in excess of the material it is lawfully authorized to obtain. Release of the requested records would indicate the scope of material Carnivore intercepts and whether the Bureau has any mechanisms in place to limit data collection in keeping with Fourth Amendment and statutory requirements.

There can be no question that the FBI's use of the Carnivore system to intercept electronic mail messages has engendered "widespread and exceptional media interest" since the Wall Street Journal first disclosed the activity on July 11. Accordingly to Lexis-Nexis, more than 50 articles have appeared in the U.S. press since that disclosure, and the Attorney General was closely questioned on the matter at her weekly news briefing on July 13. CNN has reported that "[a]n FBI spokesman says the Bureau has been so inundated with requests on this issue, it may call a news briefing to answer everybody's questions all at once."

It is equally clear that "there exist possible questions about the government's integrity which affect public confidence." Such questions are exemplified in a St. Petersburg Times editorial of July 17:

The FBI. . . is trying to take a bite out of Americans' privacy on the Internet. It has started using a rapacious computer program known as "Carnivore" to do cyberspace snooping on investigative targets.

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The program is attached to the target's Internet service provider. There, it absorbs and analyzes all the traffic or "packets" traveling through the ISP, not just the communications of the suspect. The FBI claims Carnivore can be programmed to spit out as little information as the addresses of those receiving the suspect's e-mails. The problem is, Carnivore also could be used to retain much more, and no one but the government would know.

. . . The FBI says, "Trust us: We'll only collect what we should." But there is little reassuring about the way Carnivore may snack on our electronic conversations. The agency might sound like a protective parent, but its newest snooping tool is all Big Brother.

Likewise, the Christian Science Monitor notes in an editorial published today, "The potential for abuse is greater with Carnivore than with a simple phone tap. The program's capabilities are potentially sweeping."

The American public is deeply concerned about potential government intrusions into personal affairs, particularly private communications. While the Attorney General and FBI spokesmen have acknowledged and addressed these concerns, there is no substitute for the disclosure of internal Bureau records concerning the use of the Carnivore system. Indeed, the very purpose of the FOIA is to lessen the public's dependence on official agency statements and open the underlying documentation to public scrutiny. This is clearly an instance in which expedited processing of an FOIA request is warranted.

For your information, the Electronic Privacy Information Center ("EPIC") is a non-profit educational organization that disseminates information on privacy issues to the public. We accomplish that mission through our heavily-visited Web site and a bi-weekly electronic newsletter that is sent to more than 13,000 recipients, many of whom cover Internet privacy issues for a variety of news outlets. Indeed, EPIC has been recognized as a "representative of the news media" for fee assessment purposes by every federal agency that has received our FOIA requests.

Thank you for your consideration of this request. As applicable Department regulations provide, I will anticipate your determination within ten (10) calendar days.

Under penalty of perjury, I hereby affirm that the foregoing is true and correct to the best of my knowledge and belief.

David L. Sobel
General Counsel
Electronic Privacy Information Center

Sample Freedom of Information Act Complaint

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ELECTRONIC PRIVACY INFORMATION CENTER
1718 Connecticut Ave. NW.
Suite 200
Washington, DC 20009
Plaintiff,

v.

C.A. No. 02-0063

U.S. DEPARTMENT OF JUSTICE
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

and

U.S. DEPARTMENT OF THE TREASURY
1500 Pennsylvania Avenue, NW
Washington, D.C. 20220

Defendants.

COMPLAINT FOR INJUNCTIVE RELIEF

1. This is an action under the Freedom of Information Act, 5 U.S.C. § 552, for injunctive and other appropriate relief and seeking the disclosure and release of agency records improperly withheld from plaintiff by defendant Department of Justice ("DOJ") and its components Federal Bureau of Investigation ("FBI"), United States Marshals Service ("USMS"), Drug Enforcement Agency ("DEA"), Immigration and Naturalization Service ("INS"), and defendant U.S. Treasury ("Treasury") and its components Internal Revenue Service ("IRS"), and Bureau of Alcohol, Tobacco & Firearms ("ATF").

Jurisdiction and Venue

2. This Court has both subject matter jurisdiction over this action and personal jurisdiction over the parties pursuant to 5 U.S.C. § 552(a)(4)(B). This court also has jurisdiction over this action pursuant to 28 U.S.C. § 1331. Venue lies in this district under 5 U.S.C. § 552(a)(4)(B).

3. Plaintiff Electronic Privacy Information Center ("EPIC") is a public interest non-profit research organization in Washington, DC. It was established in 1994 to focus public attention on emerging civil liberties issues and to protect privacy, the First Amendment, and constitutional values. EPIC's activities include the review of federal data collection and data sharing policies to determine

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their possible impacts on civil liberties and privacy interests. Among its other activities, EPIC has prepared reports and presented testimony on privacy issues and has participated in and organized conferences on privacy.

4. Defendant DOJ is a Department of the Executive Branch of the United States Government, and includes component entities FBI, USMS, DEA, and INS. The DOJ is an agency within the meaning of 5 U.S.C. § 552(f).

5. Defendant Treasury is a Department of the Executive Branch of the United States Government, and includes component entities IRS and ATF. The Treasury is an agency within the meaning of 5 U.S.C. § 552(f).

Government Agencies' Acquisition of Private Sector Personal Information

6. On April 13, 2001, the Wall Street Journal reported that executive branch agencies were purchasing “troves of personal data from the private sector.” Glenn R. Simpson, *Big Brother-in-Law, If the FBI Hopes to Get the Goods on You, It May Ask ChoicePoint*, Wall St. J., April 13, 2001 at A1.

7. The article quoted government sources for the proposition that DOJ, FBI, USMS, INS, and IRS employees had electronic access to citizens’ assets, phone numbers, driving records, and other personal information from their desktop computers.

8. The article reported that ChoicePoint, a publicly-held company, and its competitors were supplying citizens’ personal information to at least thirty-five federal government agencies.

9. The use of private sector databases of personal information enables the government to obtain detailed information on citizens while avoiding the creation of files that would implicate protections provided under the Privacy Act of 1974, 5 U.S.C. 552a.

Plaintiff's FOIA Requests and Defendants' Failure to Respond

10. By separate letters to DOJ, FBI, USMS, DEA, INS, IRS, and ATF dated June 22, 2001, plaintiff submitted Freedom of Information Act (“FOIA”) requests for “all records relating to transactions, communications, and contracts concerning businesses that sell individuals’ personal information.” A copy of the news article referenced in paragraphs 6-8, supra, accompanied the request.

Defendant DOJ's Failure to Timely Comply with Plaintiff's Request

11. By phone call on June 29, 2001, defendant DOJ informed plaintiff that the request would be forwarded to a component within the DOJ.

12. To date, defendant DOJ has not provided the records requested by plaintiff in its FOIA request, notwithstanding the FOIA’s requirement of an agency response within twenty (20) working days.

13. Plaintiff has exhausted the applicable administrative remedies with respect to its FOIA request to defendant DOJ.

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14. Defendant DOJ has wrongfully withheld the requested records from plaintiff.

The FBI's Failure to Timely Comply with Plaintiff's Request

15. By form letter to plaintiff dated July 3, 2001, the FBI acknowledged receipt of plaintiff's FOIA request.

16. By form letter to plaintiff dated July 27, 2001, the FBI requested clarification of plaintiff's FOIA request.

17. By letter dated August 8, 2001, plaintiff clarified its request to the FBI by specifying that the subject matter of the request related to ChoicePoint, Inc.

18. To date, the FBI has not provided the records requested by plaintiff in its FOIA request, notwithstanding the FOIA's requirement of an agency response within twenty (20) working days.

19. Plaintiff has exhausted the applicable administrative remedies with respect to its FOIA request to the FBI.

20. The FBI has wrongfully withheld the requested records from plaintiff.

The USMS' Failure to Timely Comply with Plaintiff's Request

21. By form letter to plaintiff dated July 11, 2001, the USMS acknowledged receipt of plaintiff's request.

22. To date, the USMS has not provided the records requested by plaintiff in its FOIA request, notwithstanding the FOIA's requirement of an agency response within twenty (20) working days.

23. Plaintiff has exhausted the applicable administrative remedies with respect to its FOIA request to the USMS.

24. The USMS has wrongfully withheld the requested records from plaintiff.

The DEA's Failure to Timely Comply with Plaintiff's Request

25. By form letter to plaintiff dated July 26, 2001, DEA requested clarification of plaintiff's FOIA request.

26. By letter dated August 8, 2001, plaintiff clarified its request to the DEA by specifying that the subject matter of the request related to ChoicePoint, Inc.

27. To date, the DEA has not provided the records requested by plaintiff in its FOIA request, notwithstanding the FOIA's requirement of an agency response within twenty (20) working days.

28. Plaintiff has exhausted the applicable administrative remedies with respect to its FOIA request to the DEA.

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29. The DEA has wrongfully withheld the requested records from plaintiff.

The INS' Failure to Timely Comply with Plaintiff's Request

30. By form letter dated August 9, 2001, defendant INS acknowledged receipt of plaintiff's request.

31. To date, the INS has not provided the records requested by plaintiff in its FOIA request, notwithstanding the FOIA's requirement of an agency response within twenty (20) working days.

32. Plaintiff has exhausted the applicable administrative remedies with respect to its FOIA request to the INS.

33. The INS has wrongfully withheld the requested records from plaintiff.

The IRS' Partial Denial of Plaintiff's Request

34. By letter dated September 10, 2001, the IRS provided documents responsive to plaintiff's request. However, the IRS withheld 324 pages, relying upon 5 U.S.C. § 552(b)(4). Plaintiff appealed this withholding by letter dated November 8, 2001.

35. By form letter to plaintiff dated November 16, 2001, the IRS denied plaintiff's appeal.

36. Plaintiff has exhausted the applicable administrative remedies with respect to its FOIA request to the IRS.

37. The IRS has wrongfully withheld the requested records from plaintiff.

The ATF's Failure to Timely Comply with Plaintiff's Request

38. By letter to plaintiff dated August 8, 2001, the ATF acknowledged plaintiff's request.

39. By letter to plaintiff dated September 13, 2001, the ATF granted plaintiff's request in part and informed plaintiff that there would be a delay in locating responsive documents.

40. Plaintiff has exhausted the applicable administrative remedies with respect to its FOIA request to the ATF.

41. The ATF has wrongfully withheld the requested records from plaintiff.

Requested Relief

WHEREFORE, plaintiff prays that this Court:

A. order defendants to disclose the requested records in their entireties and make copies available to plaintiff;

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- B. provide for expeditious proceedings in this action;
- C. award plaintiff its costs and reasonable attorneys fees incurred in this action; and
- D. grant such other relief as the Court may deem just and proper.

Respectfully submitted,

CHRIS J. HOOFNAGLE
D.C. Bar No. 463182

DAVID L. SOBEL
D.C. Bar No. 360418

MARC ROTENBERG
D.C. Bar. No. 422825

ELECTRONIC PRIVACY INFORMATION CENTER
1718 Connecticut Ave. NW
Suite 200
Washington, DC 20009
(202) 483-1140

Counsel for Plaintiff

Sample Privacy Act Complaint

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JOHN DOE
c/o Mark S. Zaid, Esq.
1275 K Street, N.W.
Suite 770
Washington, D.C. 20005
Plaintiff,
v.
FEDERAL BUREAU OF INVESTIGATION
935 Pennsylvania Avenue, N.W.
Washington, D.C. 20535
Defendant.
C.A. No. _____

COMPLAINT

The plaintiff brings this action for injunctive, declaratory and monetary relief pursuant to the Privacy Act of 1974, 5 U.S.C. § 552a et seq., the Freedom of Information Act, 5 U.S.C. § 552(a) et seq., the Federal Declaratory Judgment Act, 28 U.S.C. § 2201.

Jurisdiction

1. This Court has jurisdiction over this action pursuant to 5 U.S.C. §§ 552a(g)(1), 552(a)(4)(B), and 28 U.S.C. § 1331.

Venue

2. Venue is appropriate in the District under 5 U.S.C. §§ 552a(g)(5), 552(a)(4)(B), and 28 U.S.C. § 1391.

Parties

3. Plaintiff John Doe is a citizen of the United States and the District of Columbia and resides in the District of Columbia.

4. Defendant Federal Bureau of Investigation ("FBI") is an agency within the meaning of 5 U.S.C. § 552a(a)(1), and is in possession and/or control of records pertaining to John Doe.

Facts

5. In or around July 1998, John Doe applied for a position with the Executive Office of the President. He was subsequently offered a position requiring a security clearance conditional upon his successfully passing a background investigation. The FBI conducts the background investigation of applicants for the office in question.

6. The background investigative portion was conducted by FBI Special Agent Peter Raub

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(phonetic), who contacted John Doe to obtain names for references. Special Agent Raub, who had indicated to John Doe that he disliked background investigations and would soon be transferred to a different position, conducted an inappropriate, unprofessional and, to some extent, illegal background investigation of John Doe. Those individuals who were interviewed by Special Agent Raub reported that he was biased and “gunning” for John Doe.

7. In or around November or December 1998, Special Agent Raub interviewed Ms. Nina Sirrianni, a schoolmate of John Doe. Following her interview by Special Agent Raub, Ms. Sirrianni refused to speak or associate with John Doe. Upon information and belief, Ms. Sirrianni’s decision was based on false, distorted and/or defamatory information concerning John Doe that was provided her by Special Agent Raub.

8. In or around December 1998, Special Agent Raub interviewed Thomas Donovan, a friend of John Doe. Special Agent Raub falsely told Mr. Donovan that he had reports that John Doe behaved aggressively towards women, and pressed him for any negative information that supported that allegation. None was provided.

9. In or around December 1998, Special Agent Raub interviewed Phillip Heuschen and Claud Hammon. Mr. Heuschen was told by Special Agent Raub that John Doe had been charged with assault, and insisted on being told stories about John Doe’s violent behavior. Mr. Hammon was provided information that was designed to portray John Doe as a sexual harasser.

10. In or around December 1998, Special Agent Raub interviewed Shoon Murray, one of John Doe’s professors. During the interview, Special Agent Raub sought to ascertain whether John Doe had a problem with women, and falsely and intentionally insinuated John Doe had had several run-ins with the law.

11. After receiving comments from his references, John Doe contacted Chuck Easley of the Executive Office of the President Security Office and informed him of Special Agent Raub’s conduct. He assured John Doe that he would have the opportunity to address any problems that might arise in the investigation before any decision was made.

12. John Doe provided FBI Special Agent Holly Heisner and a male colleague a copy of feedback he received from his references concerning the conduct of Special Agent Raub. The male agent said that they would forward it to their superiors and that John Doe would not be informed if disciplinary action was taken against Special Agent Raub. The male agent added that he would like to sit Special Agent Raub down in a room somewhere and ask him what he was thinking. They apologized for his actions, said that he was not supposed to conduct interviews for background checks in that manner and that there would be no reprisals from the FBI against John Doe.

13. On or about April 22, 1999, John Doe was informed that his FBI background investigation had determined that he was unsuitable for employment. John Doe was never provided an opportunity to respond to the inaccurate and defamatory findings described by Special Agent Raub. As a result, he resigned from his position.

14. John Doe is now an applicant for employment at another federal agency which also requires a security clearance. In order for him to obtain employment at this agency, and many others, John Doe will be required to undergo a background investigation. The current potential employer, as well as any other future federal employers, will be provided unfettered access to John Doe’s FBI application files and the negative, false and unfavorable information compiled by Special Agent Raub. This information will negatively impact upon John Doe’s ability to gain federal employment.

15. John Doe has attempted to attain access to his FBI files since July 1999 so he can challenge any erroneous and/or false information. Despite all efforts, the FBI has not permitted John Doe the opportunity to even review his application file.

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First Cause of Action (Privacy Act/Freedom of Information Act—Denial of Access to Records)

16. John Doe repeats and realleges the allegations contained in paragraphs 1 through 15 above, inclusive.

17. By letter dated July 23, 1999, John Doe, through his attorney, submitted a request to the FBI under the Privacy and Freedom of Information Acts for copies of all information maintained about himself.

18. By letter dated August 2, 1999, the FBI acknowledged receipt and assigned John Doe's request #902327-000.

19. On several occasions throughout 1999 and 2000, John Doe's attorney Mark S. Zaid has contacted the FBI for an update on the processing of his files. Upon information and belief, there are approximately 300 pages responsive to John Doe's request. Despite Mr. Zaid's notification to the FBI that John Doe requires access due to pending federal employment, no documents have been released.

20. John Doe has exhausted all required and available administrative remedies.

21. John Doe has a legal right under the Privacy and Freedom of Information Acts to obtain the information he seeks, and there is no legal basis for the denial by the FBI of said right.

Second Cause of Action (Privacy Act—Improper Dissemination)

22. John Doe repeats and realleges the allegations contained in paragraphs 1 through 15 above, inclusive.

23. The FBI, through the actions of Special Agent Raub, disseminated information protected by the Privacy Act concerning John Doe to Nina Sirrianni, Thomas Donovan, Phillip Heuschen, Claud Hammon, Shoon Murray and unknown others. This information included, but is not limited to, John Doe's arrest record, inaccurate and defamatory information surrounding any run-ins with law enforcement and inaccurate and defamatory information regarding John Doe's conduct towards women.

24. In violation of section (d)(1) of the Privacy Act, the FBI failed to secure written authorization from John Doe prior to providing the specific information detailed above. Nor was disclosure permitted by a routine exception.

25. As a result of the FBI's violations of the Privacy Act, John Doe has suffered adverse and harmful effects, including, but not limited to, mental distress, emotional trauma, embarrassment, humiliation, and lost or jeopardized present or future financial opportunities.

Third Cause of Action (Privacy Act—Improper Dissemination)

26. John Doe repeats and realleges the allegations contained in paragraphs 1 through 15 above, inclusive.

27. Prior to disseminating information and records concerning John Doe, the FBI failed to make reasonable efforts to ensure that the information and records were accurate, complete, timely and relevant for agency purposes in violation of 5 U.S.C. § 552a(e)(6). The FBI compiled information concerning John Doe's alleged arrest record, alleged run-ins with law enforcement, alleged conduct towards women and his alleged failure to repay unpaid debts. The information and records that were disseminated to unauthorized individuals were irrelevant, false, malicious and defamatory, incomplete, inaccurate, and untimely.

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28. The FBI, its employees and officers, including Special Agent Raub, knew or should have known that their actions were improper, unlawful and/or in violation of the Privacy Act.

29. The FBI, its employees and officers, including Special Agent Raub, acted intentionally or willfully in violation of John Doe's privacy rights.

30. As a result of the FBI's violations of the Privacy Act, John Doe has suffered adverse and harmful effects, including, but not limited to, mental distress, emotional trauma, embarrassment, humiliation, and lost or jeopardized present or future financial opportunities.

WHEREFORE, plaintiff John Doe requests that the Court award him the following relief:

- (1) Declare that the FBI violated the Privacy and Freedom of Information Acts;
- (2) Order the FBI to immediately disclose the requested records in their entireties to John Doe;
- (3) Award John Doe any actual damages under 5 U.S.C. § 552a(g)(4)(A), the exact amount of which is to be determined at trial but is not less than \$1,000;
- (4) Invoke its equitable powers to expunge all records or information maintained by the FBI that is inaccurate and/or derogatory to John Doe;
- (5) Award plaintiff reasonable costs and attorney's fees as provided in 5 U.S.C. §§ 552a(g)(3)(B) and/or (4)(B), 552 (a)(4)(E) and/or 28 U.S.C. § 2412 (d);
- (6) Refer those FBI officials responsible for violating the Privacy Act for prosecution under 5 U.S.C. § 552a(i)(1);
- (7) expedite this action in every way pursuant to 28 U.S.C. § 1657 (a); and
- (8) grant such other relief as the Court may deem just and proper.

Date: May 15, 2000

Respectfully submitted,

Mark S. Zaid, Esq.
Lobel, Novins & Lamont
1275 K Street, N.W.
Suite 770
Washington, D.C. 20005
(202) 371-6626

Roy W. Krieger
Paleos & Krieger, P.C.
601 Pennsylvania Ave., N.W.
Suite 900 South
Washington, D.C. 20004
(202) 639-0531
Counsels for Plaintiff

Sample Government in the Sunshine Act Complaint

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ENERGY RESEARCH FOUNDATION
537 Harden Street
Columbia, S.C. 29205
(803) 256-7298
NATURAL RESOURCES DEFENSE COUNCIL, INC.
1350 New York Avenue, N.W.
Suite 300
Washington, D.C. 20005
(202) 783-7800, and
MICHAEL F. LOWE,
2430 Terrace Way
Columbia, S.C. 29205,
Plaintiffs,
v.
DEFENSE NUCLEAR FACILITIES SAFETY BOARD
Washington, D.C. 20585
Defendant.

C.A. No. _____

COMPLAINT FOR DECLATORY AND INJUNCTIVE RELIEF

1. This action is brought under the Government-in-the-Sunshine Act, 5 U.S.C. § 552b (“Sunshine Act”), and the Freedom of Information Act, 5 U.S.C. § 552 (“FOIA”), in order to compel the Defense Nuclear Facilities Safety Board (“the Board”) to provide for public access to its meetings and records, and to comply with other requirements of these statutes.

Jurisdiction

2. This Court has jurisdiction over this action under 5 U.S.C. §§ 552b(g) and (h) (the Sunshine Act), 5 U.S.C. § 552(a)(4)(B) (the FOIA), and 28 U.S.C. § 1331 (federal question jurisdiction).

Parties

3. Plaintiff Energy Research Foundation (“ERF”) is a non-profit public-interest foundation which engages in research and public education on nuclear and other energy issues in South Carolina. ERF is particularly concerned with the effect of nuclear activities at the Department of Energy’s Savannah River site in South Carolina on the environment, public health, and economy of the surrounding community. ERF has closely monitored and sought to participate in federal decision making related to environmental and public health problems at the Savannah River facility. In order to continue this work, ERF seeks access to the Board and its activities, including attending the Board’s meetings and obtaining access to its records.

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4. Plaintiff Natural Resources Defense Council, Inc. (“NRDC”) is a national, nonprofit membership organization incorporated under the laws of the state of New York. NRDC works to preserve, protect, and defend natural resources and the environment against misuse and unreasonable degradation, and to take appropriate legal steps to carry out these purposes. NRDC has a nationwide membership of over 88,000 members of the public dedicated to the defense and preservation of the human environment. Many members have joined NRDC so that they may obtain adequate representation and protection of the environmental interests they share with NRDC.

5. One of NRDC’s objectives is to inform and educate the public about environmental and public safety and health issues at Department of Energy facilities. It has closely monitored and sought to participate in federal decision making related to environmental and public health problems at Department of Energy facilities. In order to continue this work, NRDC seeks access to the Board’s meetings and records.

6. Plaintiff Michael F. Lowe is a resident of South Carolina and Program Coordinator of ERF. He is concerned about the environmental and public health impacts of Department of Energy facilities in his state. He wishes to attend Board meetings, obtain access to Board records, and participate in the Board’s activities in other ways authorized by the Sunshine Act, FOIA, and other open government laws.

7. Defendant Defense Nuclear Facilities Safety Board is an agency of the United States, and is denying plaintiffs access to its meetings and records in contravention of federal law.

Statutory Framework and Facts Giving Rise To Plaintiffs’ Claims for Relief The Board’s Functions and Powers

8. In 1988, Congress created “an independent establishment in the executive branch” called the Defense Nuclear Facilities Safety Board. 42 U.S.C. § 2286(a). The Board is composed of five members appointed by the President with the advice and consent of the Senate. 42 U.S.C. § 2286(b).

9. The Board is authorized and commanded by statute to perform a variety of substantive duties, including (a) investigating any event or practice at a Department of Energy defense nuclear facility which the Board determines has adversely affected, or may adversely affect, public health and safety, (b) reviewing and evaluating the content and implementation of standards relating to the design, construction, operation, and decommissioning of defense nuclear facilities, (c) determining whether the Secretary of Energy is adequately implementing health and safety standards in the operation of defense nuclear facilities, and (d) reviewing the design of every new Department of Energy defense nuclear facility before construction. 5 U.S.C. § 2886a.

10. In order to carry out its statutory duties, the Board is empowered to hold hearings, subpoena witnesses and documents, hire employees, impose binding reporting requirements for the Secretary of Energy including the reporting of classified information, and promulgate regulations. 5 U.S.C. § 2286b. The Board’s actions are expressly made subject to the judicial review provisions of the Administrative Procedure Act. 5 U.S.C. § 2286f (“APA”).

The Sunshine Act

11. The Sunshine Act requires that “every portion of every meeting” of a multi-member agency must “be open to public observation,” with narrow exceptions. 5 U.S.C. §§ 552b(b) and (c). The Sunshine Act also requires agencies to announce publicly the time, place, and subject matter of meetings at least a week before the meeting, 5 U.S.C. § 552b(e)(1), and to prepare a complete transcript or electronic recording of meetings that are closed for any reason, 5 U.S.C. § 552b(f). Agencies must also promulgate regulations implementing the requirements of the Sunshine Act. 5 U.S.C. § 552b(g).

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12. The Board has held meetings for the purpose of accomplishing its statutory duties, but has not provided for public access to those meetings nor has it complied with any of the other requirements of the Sunshine Act.

13. The Board will conduct additional meetings in the future, but does not intend to comply with the Sunshine Act.

The Freedom of Information Act

14. Section (a)(1) of the FOIA requires each executive branch agency to publish a number of items in the Federal Register, including the agency's "rules of procedure," "substantive rules of general applicability," and the employees "from whom, and the methods whereby, the public may obtain information, make submittals or requests, or obtain decisions." 5 U.S.C. § 552(a)(1).

15. Section (a)(2) of the FOIA requires agencies to make available for public inspection and copying a number of records, including all "administrative staff manuals and instructions to staff that affect a member of the public," and "final opinions" of the agency. 5 U.S.C. § 552(a)(2).

16. Section (a)(3) of the FOIA authorizes members of the public to submit requests for other agency records. In order to facilitate the exercise of this right, the FOIA requires agencies to publish in the Federal Register, following public notice and comment, regulations specifying the schedule of fees applicable to the processing of FOIA requests and guidelines for determining whether fees for such requests should be waived or reduced. 5 U.S.C. § 552(a)(4)(A).

17. The Board has failed to promulgate any of the regulations required by the FOIA or to make available to the public any of the materials described in paragraphs 14-16.

Plaintiffs' Request to the Board

18. On January 23, 1990, plaintiffs ERF and NRDC sent the Board a detailed letter explaining that the Board was in ongoing violation of the Sunshine Act and the FOIA. Plaintiffs' letter specified seven actions that the Board needed to take in order to comply with those laws and requested a response by February 14, 1990.

19. By letter dated January 24, 1990, the Chairman of the Board informed plaintiffs that the Board did not believe it "is or has been in violation of any Federal laws. . . ." The letter did not discuss the Sunshine Act or the FOIA, nor did it respond to any of the specific requests made by plaintiffs. Plaintiffs were informed by the Department of Justice, which is acting as counsel for the Board, that an additional response to their letter would be forthcoming.

20. On February 16, 1990, plaintiffs' attorney was notified by the Department of Justice that the Board's final position is that it is not required to comply with any of the provisions of the Sunshine Act or the FOIA.

Count One

21. The Board is an agency subject to the requirements of the Sunshine Act but is not complying with any of the provisions of that Act. This failure is injuring and will continue to injure plaintiffs by preventing them from learning about and attending the Board's meetings.

Count Two

22. The Board is an agency subject to the requirements of the FOIA but is not complying with any of the provisions of that Act. This failure is injuring and will continue to injure plaintiffs by preventing them from learning about and obtaining access to Board records.

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Count Three

23. In failing to promulgate regulations, and to take other steps necessary to implement the Sunshine Act and the FOIA, the Board has unlawfully withheld and unreasonably delayed action, and has otherwise acted arbitrarily, capriciously, and contrary to law in violation of the APA, 5 U.S.C. §§ 555(b), 701-706.

WHEREFORE, plaintiffs pray that this Court:

- (1) Enter an order declaring that the Board:
 - (a) is subject to the Sunshine Act but is not complying with any of its requirements;
 - (b) is subject to the FOIA but is failing to promulgate regulations and make agency records available to the public as required by 5 U.S.C §§ 552(a)(1), (a)(2), and (a)(4);
 - (c) is unlawfully withholding and unreasonably delaying agency action, and is acting arbitrarily, capriciously, and contrary to law, in violation of the APA;
- (2) Enter an order preliminarily enjoining the Board from conducting any further meetings unless and until it undertakes to comply with the requirements of sections (b) through (g) of the Sunshine Act, 5 U.S.C. §§ 552b(b) - (g);
- (3) Enter a permanent injunction directing the Board to comply promptly with the requirements of the Sunshine Act and the FOIA;
- (4) Award plaintiffs their costs, reasonable attorneys' fees, and other disbursements in this action; and
- (5) Grant such other and further relief as the Court may deem just and proper.

Respectfully submitted,

Eric R. Glitzenstein
D.C. Bar No. 358287

Anne Spielberg

Dean R. Tousley
D.C. Bar No. 362678

Harmon, Curran & Tousley
Suite 430
2001 S Street, N.W.
Washington, D.C. 20009
(202) 328-3500

Dan W. Reicher

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D.C. Bar No. 418282
National Resources Defense Council
Suite 300
1350 New York Ave., N.W.
Washington, D.C. 20005
(202) 783-7000

Robert Guild
Energy Research Foundation
537 Harden Street
Columbia, S.C. 29205
(803) 256-7298

Attorneys for Plaintiffs

March 8, 1990

Sample Federal Advisory Committee Act Complaint

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

NATURAL RESOURCES DEFENSE COUNCIL,
1200 New York Ave., N.W.
Suite 400
Washington, DC 20005,
and
TRI-VALLEY CARES,
2582 Old 1st Street,
Livermore, CA 94550-3835,
Plaintiffs,
v.
BILL RICHARDSON,
Secretary, The Department of Energy
1000 Independence Ave., S.W.
Washington, D.C. 20585,
and
DEPARTMENT OF ENERGY
1000 Independence Ave., S.W.
Washington, D.C. 20585,
Defendants.

C.A. No. _____

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

1. This case challenges the Department of Energy’s ongoing violations of the Federal Advisory Committee Act, 5 U.S.C. App. II (1972) (“FACA”), as amended, with respect to advisory committees which have provided DOE with recommendations concerning a multi-billion dollar National Ignition Facility (“NIF”) under construction in Livermore, California.

Jurisdiction

2. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331.

Parties

3. Plaintiff Natural Resources Defense Council, Inc., (“NRDC”) is a non-profit organization with over 400,000 members dedicated to the protection of the environment. It brings this action on its own behalf, and on behalf of its members.

4. NRDC works on a number of environmental issues, including issues related to the proliferation and hazards of nuclear weapons. In particular, for decades NRDC’s Nuclear Program has engaged in public education and advocacy concerning DOE’s nuclear weapons programs, including, in recent years, issues related to the NIF. NRDC has submitted comments to DOE concerning the NIF, has

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used its newsletters, website, and other publications to inform its members about the NIF, and has undertaken litigation concerning the NIF. When permitted by DOE, NRDC has also closely monitored, and participated in, DOE's outside reviews of the NIF.

5. NRDC members live in the vicinity of the NIF in Livermore, California.

6. Defendants' violations of FACA injure NRDC and its members. By failing to conduct open meetings and make advisory committee materials publicly available in the manner required by FACA, defendants are violating NRDC's statutory right to obtain information concerning these committees and their recommendations, and to disseminate that information to its members and the public, as well as to present information to DOE advisory committees and to DOE.

7. In addition, because these advisory committees and their recommendations are playing an important role in the decision-making concerning whether to continue funding constructing, and subsequently operating the NIF, the health and safety of NRDC members living near the NIF is threatened by DOE's unlawful use of these committees. For example, DOE may use radioactive or other hazardous materials in NIF experiments, or may conduct radiation effects tests at NIF. DOE's use of illegal advisory committees and their recommendations therefore threatens NRDC members who live in the vicinity of the NIF with releases of radioactive tritium, uranium, and plutonium, and other highly toxic materials such as beryllium and lithium hydride.

8. These FACA violations also injure NRDC and its members because continued funding, construction, and subsequent operation of the NIF—which DOE's illegal advisory committees directly influence—could increase the risks of nuclear arms proliferation and destabilize the current nuclear test moratorium among the major nuclear weapon powers. Completion and operation of the NIF increases the risk that certain nuclear-capable countries—such as India, Pakistan, Japan and Germany—will use the data and analysis generated by unclassified and partly classified NIF experiments to advance their fundamental understanding of nuclear weapons physics, and hence their abilities to design thermonuclear weapons and possibly even confirm their performance without conducting nuclear test explosions. Completion and operation of the NIF also increases the risks that additional countries, such as Russia and China, may revert to testing nuclear weapons to insure that any improvements the NIF permits in U.S. nuclear weapons are matched by improvements in these countries' own weapons. In addition, DOE's FACA violations injure NRDC and its members because the escalating funding demands of the NIF project—now totaling some \$4 billion dollars—and its inadequately reviewed scientific and technical problems, have undermined the confidence of the U.S. Senate in the nation's Stockpile Stewardship Program, and hence have diminished the prospects for Senate ratification of the Comprehensive Test Ban Treaty, a long standing priority of NRDC and its members. Thus, DOE's FACA violations harm NRDC and its members by furthering actions that could destabilize the existing nuclear test moratorium and spread nuclear weapons knowledge to additional countries, thereby increasing the risks of nuclear war.

9. Plaintiff Tri-Valley CAREs ("TVC") is a non-profit organization which has been involved in numerous advocacy activities concerning the NIF. Founded in 1983, TVC undertakes projects that increase public knowledge of the relationship between peace and environmental issues, including public education regarding potential impacts from the production, treatment, storage and disposal of hazardous and radioactive waste. A Livermore community-based organization, TVC's members reside, own property, work, recreate and attend public meetings near Lawrence Livermore National Laboratory ("Livermore"), where the NIF is being constructed. TVC members have participated in many administrative, legal and grassroots efforts involving the DOE's nuclear weapons complex, including the plans for the NIF at Livermore, and have devoted substantial resources advocating for Livermore to be converted from military to civilian research and uses. When permitted by DOE, TVC has also closely monitored, and participated in, DOE's outside reviews of the NIF. TVC brings this action on its own behalf and on behalf of its more than 2,600 members.

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10. Defendants' violations of FACA injure TVC and its members. By failing to conduct open meetings and make advisory committee materials publicly available in the manner required by FACA, defendants are violating TVC's statutory right to obtain information concerning these committees and their recommendations, and to disseminate that information to its members and the public, as well as to present information to DOE advisory committees and to DOE.

11. In addition, because these advisory committees and their recommendations are playing an important role in DOE's decision-making concerning whether to continue construction and subsequently operate the NIF, the health and safety of TVC members living near the NIF is threatened by DOE's unlawful use of these committees. For example, DOE may use radioactive or other hazardous materials in NIF experiments, and may conduct radiation effects tests at NIF. DOE's use of illegal advisory committees and their recommendations therefore threatens TVC members who live in the vicinity of the NIF with releases of radioactive tritium, uranium and plutonium, and other highly toxic materials such as beryllium and lithium hydride.

12. These FACA violations also injure TVC and its members because continued funding, construction and operation of the NIF—which these committees influence—largely undermines TVC's long standing effort to have Livermore reduce its focus on military-related projects in favor of devoting more resources to civilian projects. Without the NIF, Livermore is likely to be far less involved in military programs in the future, and far more involved in civilian-related research and development.

13. On information and belief, because DOE needs an independent review of the NIF in order to assure its continued construction, an injunction which prevents DOE from using recommendations obtained in violation of FACA will cause DOE to establish or utilize a FACA-complying advisory committee to review the NIF. Because NRDC and TVC will then have access to, and the opportunity to participate in, that advisory committee to the full extent permitted by FACA, prohibiting DOE from using certain advisory committee recommendations obtained in violation of FACA will redress injuries NRDC and TVC have suffered from these violations.

14. Defendant Bill Richardson is the Secretary of the Department of Energy, and is ultimately responsible for all decision-making regarding both the NIF and DOE's compliance with FACA.

15. Defendant The Department of Energy is an Executive Branch Department.

Statutory Framework and Facts Giving Rise to Plaintiffs' Claims

A. The Federal Advisory Committee Act

16. FACA imposes requirements on agencies when they establish or utilize any advisory committee, which is defined as a group of individuals, including at least one non-federal employee, which provides collective advice or recommendations to the agency. 5 U.S.C. App. II, § 3(2). When an agency seeks to obtain such advice or recommendations, it must ensure the advisory committee is "in the public interest," 5 U.S.C. App. II, § 9(2), is "fairly balanced in terms of points of view represented and the function to be performed," *id.* § 5(b)(2), and does not contain members with inappropriate special interests. *Id.* at § 5(b)(3). If these criteria are satisfied, the agency must file a charter for the committee. *Id.* at § 9(c).

17. Once an advisory committee is operating, the agency also must comply with requirements designed to ensure public access and participation. Among other requirements, an advisory committee must provide adequate public notice of, and conduct, open meetings, *id.* at § 10(a), and must make transcripts of meetings available to the public. *Id.* at §§ 10(b), 11(a). In addition, all documents made available to, or prepared by, an advisory committee must be publicly accessible. *Id.* at § 10(b). A federal employee must chair, or attend, each advisory committee meeting. *Id.* at § 10(e).

B. The National Ignition Facility

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18. As one component of an overall effort to achieve some of the objectives of nuclear weapons testing without conducting full-scale nuclear tests, the DOE has been constructing the National Ignition Facility (“NIF”) at the Lawrence Livermore National Laboratory (“Livermore”) in Livermore, California. Once completed, scientists using the NIF—which is the size of the Rose Bowl—will attempt to ignite the nuclear fusion process in the laboratory by converging 192 lasers on a small cylindrical target containing a tiny fusion fuel pellet, compressing and heating it until fusion reactions among its atoms emit more nuclear energy than the laser energy on the target, a process called “ignition.”

19. Although a number of scientists and outside organizations raised significant concerns about the NIF, including its cost, its ability to achieve ignition, and its impact on the proliferation of nuclear weapons in other countries, DOE began constructing the NIF in May 1997. At that time DOE estimated that the facility and related research and development would cost \$ 2.2 billion, and that the NIF would be completed in 2003.

20. In 1998, some of these same concerns began to be raised within DOE. While DOE has continued to press forward with construction of the NIF, it now acknowledges that construction of the facility will cost over \$1 billion more than planned at the time the decision to begin construction was made, and will not be completed until the end of fiscal year 2008, five years later than originally planned.

21. In response to these and other related developments, members of Congress asked the General Accounting Office (“GAO”) to undertake a study of the NIF project, and a GAO Report was issued in August 2000. According to that Report, DOE continues to severely underestimate the cost of NIF by more than \$500 million, and has failed to demonstrate where within the DOE budget the additional funds needed to ensure completion of the project will be found. The GAO further found that one of the primary reasons for the NIF management and oversight failures which have led to these major cost overruns and delays is the absence of any effective independent review of the NIF.

22. The GAO Report’s major recommendation is that DOE arrange for an outside scientific and technical review of the technical challenges remaining for the NIF and the relationship of those challenges to the cost and schedule of the project. Although the GAO Report acknowledges that there have been a number of outside reviews which have provided DOE with advice concerning the NIF since construction began, the Report concludes that none of these reviews have been truly independent of DOE or the sponsoring laboratory, and that in some instances DOE has actively sought to dictate the results of such outside reviews. It is for this reason, the GAO Report suggests, that each of these committees has rendered positive recommendations for continuing to proceed with the NIF, despite the persistence of serious scientific, technological and cost issues requiring clarification by a probing, independent review.

C. DOE’s FACA Violations With Regard To Advice And Recommendations Concerning the NIF.

23. In 1992, DOE established a federal advisory committee under FACA (the “DOE-ICFAC”) to review the inertial confinement fusion program of which NIF is a part. Prior to DOE’s decision whether to begin construction of the NIF, in late 1995 the chairman of the DOE-ICFAC reported to DOE that, in the Committee’s view, further research and development work on the NIF ignition target was necessary to increase confidence that NIF would meet its ignition goal.

24. In late 1995, DOE elected to terminate this FACA committee—the last FACA-complying committee asked to review the NIF. Among the reasons cited for this decision was precisely the fact that the DOE-ICFAC had to operate within FACA’s legal constraints.

25. Since that time, DOE has established and utilized several advisory committees to obtain further advice and recommendations concerning the NIF—committees which, although they are

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advisory committees within the meaning of FACA, were formed and have operated in violation of that statute.

26. At DOE's request, in 1996 the National Academy of Sciences' National Research Council formed an Inertial Confinement Fusion Advisory Committee ("NRC-ICF Committee") to evaluate the NIF. Because the NRC-ICF Committee did not comply with FACA, plaintiffs NRDC and TVC, and others, brought suit in this Court, and the Court issued a preliminary injunction against DOE's use of this Committee's Report. The Court subsequently issued a permanent injunction against DOE providing further support to the NRC-ICF Committee. *See NRDC v. Peña*, No. 97-0308 (PLF).

27. Despite this litigation, DOE has continued to obtain advice and recommendations concerning the NIF in violation of FACA. In response to GAO's recommendation that DOE undertake an external, independent review of the NIF, DOE claims that it implemented the recommendation by forming an advisory committee that undertook an independent review of the NIF in August 2000.

28. That advisory committee, known as the "Rebaseline Committee," was established by DOE and contains members who are non-federal employees. As reflected in the Committee's August 2000 Report—"Department of Energy Rebaseline Validation Review of the National Ignition Facility Project" ("Rebaseline Validation Review")—the Committee is providing policy advice to DOE concerning the NIF. For each aspect of the project—including a section on environment, safety and health—the Report provides a host of recommendations to DOE.

29. Although the Rebaseline Committee is clearly subject to FACA's requirements, DOE has not complied with FACA in any fashion with respect to the Rebaseline Validation Review—the meetings were not open to the public, the existence of the Committee was not made public, the required committee materials were not made publicly available, and DOE never filed a charter for the Committee. Although the Review was provided to DOE in August 2000, DOE did not publicly release it until after DOE delivered the Review to Congress, on September 15, 2000. Plaintiffs became aware of the fact that the Rebaseline Committee had members who are not federal employees only a few days before the Rebaseline Validation Review was publicly released.

30. DOE also never made the required findings that the Rebaseline Committee was "in the public interest," was "fairly balanced," and was free of members with inappropriate special interests. *Id.* at §§ 5(b), 9(2). In addition to DOE and DOE-laboratory employees, the Rebaseline Committee included other persons predisposed to support continuation of the NIF Project without conducting a probing review of the facility's underlying scientific and technical problems and their relation to the NIF's ultimate performance and cost.

31. For example, there were four members of the "Large Optics" subcommittee—who are also members of the full Committee—who ostensibly reviewed the laser science behind the NIF. None of them could be expected to assess the construction and operation of the NIF objectively and without bias. The chairperson of the subcommittee, Michel Andre, is a senior scientist in the French Megajoule laser project, which has extensive contractual relations and joint efforts with the NIF program. If the Committee were to find a fundamental problem with the NIF, then this could negatively impact funding for the French program, and Mr. Andre's career.

32. John Emmett, another member of the Large Optics subcommittee, has been a frequent consultant to the Livermore NIF program, and was formerly the Associate Director for Lasers at Livermore. When Emmett was at Livermore he helped invent the multi-pass optical design concept being utilized on the NIF, creating a natural bias in favor of finding that the NIF will work, and against admitting the possibility of a fundamental problem with the facility's design.

33. Yet another subcommittee member, Dr. Michelle Shinn, works at DOE's Thomas Jefferson Laboratory, whose director, Dr. Hermann Gruner, chairs Livermore's NIF Programs Review Committee, one of the bodies most responsible for failing to exert adequate oversight of the project, and

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has personally lobbied in Washington for full NIF funding. E. Perry Wallerstein, the final member of this critical subcommittee, was formerly an employee of Livermore, and is now a paid consultant to Livermore.

34. Two other subpanels of the Rebaseline Committee—on laser beamline equipment, and assembly, installation, and commissioning—were chaired by subordinates of Dr. Grunder from DOE’s Thomas Jefferson Laboratory, and each of these panels also included a member from the University of Rochester’s Laboratory for Laser Energetics, which is a major subcontractor and scientific collaborator on the NIF Project. The second of these panels also included a private consultant, Damon Giovanielli, who had served a few months earlier as the chair of the Livermore Laboratory’s own “Target Physics Program Review Committee,” which had concluded that, “NIF should be completed to its full 192-beam configuration.”

35. DOE has also failed to comply with FACA with respect to a subcommittee of the Secretary of Energy’s Advisory Board (“SEAB”), called the NIF Task Force. Although the NIF Task Force is a FACA advisory committee, established and utilized by DOE to provide outside advice concerning the NIF, the NIF Task Force has conducted meetings without providing the advance notice required by FACA, and has not made meeting materials available as required by FACA. Plaintiff TVC was forced to file a Freedom of Information Act request to try to obtain DOE documents which had been shared with the NIF Task Force.

36. The NIF Task Force is still preparing its final recommendations for DOE. Nonetheless, on September 7, 2000, the Chairman of the NIF Task Force, in a letter written on SEAB letterhead, wrote directly to the Secretary of Energy that the NIF Task Force has concluded that the NIF should proceed as planned.

37. On September 15, 2000, DOE submitted materials to Congress as part of an effort to ensure that Congress permits DOE to continue construction of the NIF. Among the materials in that submission were the Rebaseline Validation Review and the September 7, 2000 letter from the Chairman of the NIF Task Force. DOE submitted these materials to Congress in an effort to demonstrate that independent reviewers have recommended to the DOE that it should proceed with the NIF.

38. On information and belief, DOE intends to continue to obtain advice and recommendations from advisory committees concerning the NIF, without having those committees comply with FACA.

Plaintiffs’ Claims for Relief **Claim One**

39. By establishing and utilizing the Rebaseline Committee, permitting it to meet and deliberate without complying with FACA, and then obtaining and using the Committee’s Report—the Rebaseline Validation Review—the defendants are violating FACA, and are acting in a manner which is arbitrary, capricious, and contrary to law, in violation of the Administrative Procedure Act. 5 U.S.C. § 706.

Claim Two

40. By engaging in a pattern and practice of violating FACA, 5 U.S.C. App. II, as amended, DOE has acted, and is acting, in a manner which is arbitrary, capricious, and contrary to law, in violation of the Administrative Procedure Act. 5 U.S.C. 706.

WHEREFORE, plaintiffs respectfully request that this Court:

- (1) declare that DOE has violated FACA with respect to the Rebaseline Committee and the NIF Task Force;
- (2) declare that DOE is engaged in a pattern and practice of violating FACA;

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- (3) order DOE to publicly release all materials related to the Rebaseline Committee and the NIF Task Force which are covered by Section 10 of FACA, 5 U.S.C. App. II, § 10;
- (4) order DOE to provide written notice to all of the individuals and organizations to whom DOE has provided the Rebaseline Validation Review, explaining that the Rebaseline Committee recommendations were obtained in violation of FACA;
- (5) enjoin DOE from using, or relying upon, the Rebaseline Validation Review;
- (6) enjoin DOE from continuing to engage in a pattern and practice of violating FACA;
- (7) award plaintiffs their costs, attorneys' fees, and other disbursements for this action; and
- (8) grant plaintiffs such other and further relief as this Court may deem just and proper.

Respectfully submitted,

Howard M. Crystal
(D.C. Bar No. 446189)

Eric R. Glitzenstein
(D.C. Bar No. 358287)
Meyer & Glitzenstein
1601 Connecticut Ave., N.W.
Suite 450
Washington, D.C. 20009
(202) 588-5206

Attorneys for Plaintiffs

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