

From: [Curley, Michael](#)
To: [Zachary Fabish](#)
Cc: [Schena, Cristeen](#)
Subject: RE: FOIA Request #2020-005036 re Schiller Station
Date: Friday, September 18, 2020 7:46:00 PM
Attachments: [Schiller Pilot Project cover letter.pdf](#)
[Schiller CWWS Performance Study 20200729.pdf](#)

Hi Zack-

Sorry it's taken me longer than a day or two to get back to you – another matter has kept me very busy this week. As we talked about earlier this week, I have looked through my files and located the documents that we received from GSP under the Schiller permit this summer. I also mentioned on our call that I could send them to you without you having to submit a FOIA request, as long as GSP had not attached a claim of confidentiality to them. As a result, I have attached two of those documents to this email, but as I mentioned could be a possibility, a third document was labeled CBI by GSP. Therefore, I cannot send you the third document outside of the FOIA process. If you decide that you nonetheless want it, I think you'll have to submit a FOIA request for it. And, as you are probably aware, there have been some recent developments in the [case law](#) regarding the release of CBI.

In any event, if you'd like to discuss any of this, please feel free to call.

[Michael Curley](#)
Assistant Regional Counsel

US EPA Region 1 – New England | Office of Regional Counsel
5 Post Office Square, Suite 100 | Mailcode: 04-6 | Boston, MA 02109-3912 | (617) 918-1623

From: Curley, Michael
Sent: Monday, September 14, 2020 2:41 PM
To: Zachary Fabish <zachary.fabish@sierraclub.org>
Cc: Schena, Cristeen <Schena.Cristeen@epa.gov>
Subject: RE: FOIA Request #2020-005036 re Schiller Station

Hi Zack-

As we just discussed over the phone, the deadline for any hardcopy records is now October 30, 2020. As we get closer to that date, we can reassess again.

You also asked for submittals received from GSP as a result of the recent minor modification to the permit. I think we should be able to take care of that outside of the FOIA process so that you don't have to submit another FOIA request. As such, I will search through my records and get back to you within the next day or so.

Michael Curley
Assistant Regional Counsel

US EPA Region 1 – New England | Office of Regional Counsel
5 Post Office Square, Suite 100 | Mailcode: 04-6 | Boston, MA 02109-3912 | (617) 918-1623

From: Zachary Fabish <zachary.fabish@sierraclub.org>
Sent: Monday, September 14, 2020 1:05 PM
To: Curley, Michael <Curley.Michael@epa.gov>
Cc: isabel.englehart@sierraclub.org; Schena, Cristeen <Schena.Cristeen@epa.gov>
Subject: Re: FOIA Request #2020-005036 re Schiller Station

Hi Michael,

Would it be possible to do a quick phone call? I have a couple of questions. I can be reached at 650 388 8446.

Thanks,

-Zack

On Thu, Sep 10, 2020 at 9:42 AM Curley, Michael <Curley.Michael@epa.gov> wrote:

Good morning, Zack. Since most Region 1 employees are still working remotely and will likely continue to do so for the near future, I thought I'd touch base to suggest another extension to the deadline for any hardcopy records. How does another 45 days sound, which would bring us to Friday October 30th?

Michael Curley
Assistant Regional Counsel

US EPA Region 1 – New England | Office of Regional Counsel
5 Post Office Square, Suite 100 | Mailcode: 04-6 | Boston, MA 02109-3912 | (617) 918-1623

From: Curley, Michael
Sent: Wednesday, July 29, 2020 5:17 PM
To: 'Zachary Fabish' <zachary.fabish@sierraclub.org>
Cc: isabel.englehart@sierraclub.org; Schena, Cristeen <Schena.Cristeen@epa.gov>
Subject: RE: FOIA Request #2020-005036 re Schiller Station

Thanks, Zack. So, September 15th is the new deadline for any hard copy records, and we can touch

base as we get closer to that date and as the situation develops.

Michael Curley
Assistant Regional Counsel

US EPA Region 1 – New England | Office of Regional Counsel
5 Post Office Square, Suite 100 | Mailcode: 04-6 | Boston, MA 02109-3912 | (617) 918-1623

From: Zachary Fabish <zachary.fabish@sierraclub.org>
Sent: Wednesday, July 29, 2020 2:35 PM
To: Curley, Michael <Curley.Michael@epa.gov>
Cc: isabel.englehart@sierraclub.org; Schena, Cristeen <Schena.Cristeen@epa.gov>
Subject: Re: FOIA Request #2020-005036 re Schiller Station

That sounds reasonable to me. Hope you have a pleasant vacation in August.

On Tue, Jul 28, 2020 at 9:00 PM Curley, Michael <Curley.Michael@epa.gov> wrote:

We could do a 30-day extension for now and then revisit, but in addition to the uncertainty about when staff will return to the office, I have plans to be on vacation the last full week of August. As a result, I would not be available to communicate with you or EPA employees about the FOIA in the run-up to an August 31st deadline or to review documents, if any are turned up in the search.

So, if you think 60 days is too long, I would propose a 45-day extension, that is, to September 15th, which would leave time to revisit in early September, if necessary.

Michael Curley
Assistant Regional Counsel

US EPA Region 1 – New England | Office of Regional Counsel
5 Post Office Square, Suite 100 | Mailcode: 04-6 | Boston, MA 02109-3912 | (617) 918-1623

From: Zachary Fabish <zachary.fabish@sierraclub.org>
Sent: Tuesday, July 28, 2020 7:03 PM
To: Curley, Michael <Curley.Michael@epa.gov>
Cc: isabel.englehart@sierraclub.org; Schena, Cristeen <Schena.Cristeen@epa.gov>
Subject: Re: FOIA Request #2020-005036 re Schiller Station

I realize that the situation is a bit in flux, but, is there guidance the Region or EPA in general is operating under concerning when folks might be back in the office?

I think that I'd be more comfortable with a 30-day extension. Although from my perspective the pandemic looks quite bad, some of the top minds in the Administration do maintain that Covid-19 may just go away, so it may make sense to do a shorter extension and then reevaluate as we get closer to the date.

On Mon, Jul 27, 2020 at 9:12 AM Curley, Michael <Curley.Michael@epa.gov> wrote:

Hi Zack-

It's anybody's guess when Region 1 employees who could potentially have hardcopy records would be back in the office and able to search. But I understand your reticence to withdraw the request, so if you'd rather just push the deadline back, that's fine. If so, how about moving it 60 days, say, to September 30th?

-Michael

From: Zachary Fabish <zachary.fabish@sierraclub.org>

Sent: Friday, July 24, 2020 5:45 PM

To: Curley, Michael <Curley.Michael@epa.gov>

Cc: isabel.englehart@sierraclub.org; Schena, Cristeen <Schena.Cristeen@epa.gov>

Subject: Re: FOIA Request #2020-005036 re Schiller Station

Hi Michael,

I appreciate the update, and you reaching out. I'm certainly sympathetic concerning the difficulties the pandemic poses, but I'm a bit loath to just withdraw the FOIA request, so I'm interested in what you think might be an appropriate extension--what do you propose?

Thanks, and hope you have pleasant plans for the weekend,

-Zack

On Fri, Jul 24, 2020 at 2:12 PM Curley, Michael <Curley.Michael@epa.gov> wrote:

Hi Zack-

When we talked on June 22nd, we agreed on an extension of the due date for hardcopy records in this FOIA request to July 31, 2020, because of the coronavirus pandemic. Since we are getting close to July 31st and the vast majority of Region 1 employees continue to be in telework-only status, I wanted to reach out to ask that you either withdraw your request as to any records that are only available in hardcopy format or agree to an extension of the deadline for such records. At this point, we really don't know when staff will be physically back in the office, so I would suggest that withdrawal is the better option; you could, of course, resubmit a new FOIA for any hardcopy records at a later date. Please let me know if this is agreeable to you.

Thanks

Michael Curley
Assistant Regional Counsel

US EPA Region 1 – New England | Office of Regional Counsel
5 Post Office Square, Suite 100 | Mailcode: 04-6 | Boston, MA 02109-3912 | (617) 918-1623

From: Curley, Michael
Sent: Monday, June 22, 2020 5:39 PM
To: Zachary Fabish <zachary.fabish@sierraclub.org>
Cc: isabel.englehart@sierraclub.org; Schena, Cristeen <Schena.Cristeen@epa.gov>
Subject: RE: FOIA Request #2020-005036 re Schiller Station

Hi Zack-

Nice to talk to you on the phone earlier today. In our conversation, you confirmed that the deadline I proposed below for hard copy records is agreeable to you. You also indicated that there are two records in particular that you are most interested in receiving. After I got off the phone with you, I reviewed the permit to find details on the particular records, and I think the records you are interested in are 1) a submittal required of GSP pursuant to Part I.A.11.b.iii of the Final Permit issued April 6, 2018, and 2) any EPA communication to GSP providing comments on that submittal. If so, I believe that GSP has not yet submitted the particular report you are interested in, which of course would also mean that there would be no EPA communication providing comments on that report.

I believe this to be the case because in March 2020, GSP requested, and EPA granted, a 120-day extension of the deadline for that report, pursuant to a minor modification of the 2018 Final Permit. In other words, the due date for this report has not yet arrived. I have attached both GSP's request and the minor modification issued by EPA. Please let me know if, by providing the attached records, you would consider the FOIA request fulfilled, or if you are interested in receiving additional unprivileged records in EPA's possession responsive to the request. If the latter, I have begun to review a few records for this request, and my intent would be to make rolling releases available to you this week. If that time were to slip a bit, however, I would let you know.

Either way, if you have any questions or would like to discuss, feel free to email or call me at the number below.

Michael Curley
Assistant Regional Counsel

US EPA Region 1 – New England | Office of Regional Counsel
5 Post Office Square, Suite 100 | Mailcode: 04-6 | Boston, MA 02109-3912 | (617) 918-1623

From: Zachary Fabish <zachary.fabish@sierraclub.org>
Sent: Monday, June 22, 2020 12:16 PM
To: Curley, Michael <Curley.Michael@epa.gov>
Cc: isabel.inglehart@sierraclub.org; Schena, Cristeen <Schena.Cristeen@epa.gov>
Subject: Re: FOIA Request #2020-005036 re Schiller Station

Thank you, Michael. I appreciate you reaching out via email. Our offices have likewise been affected by the pandemic, and so our access to voicemail has been unfortunately sporadic.

I will give you a call soon. Thank you again,

-Zack

On Mon, Jun 22, 2020 at 11:40 AM Curley, Michael <Curley.Michael@epa.gov> wrote:

Zachary Fabish and Isabel Englehart-

On June 3, 2020, you submitted a FOIA request for certain EPA records related to Schiller Station in New Hampshire. I've left a couple of messages at the phone number you provided with your request, but so far have not heard back from you. Therefore, I'm emailing you to let you know that we will be unable to conduct a search in the near term to determine whether any hard copy records exist that would be responsive to your request. As you undoubtedly know, the Region 1 office in Boston has been closed since mid-March because of the coronavirus pandemic. While we will soon enter a phased reopening, I think it's safe to say that most, if not all, EPA employees who could potentially have hard copy records related to your request will continue to work from home and will not be in the office for several more weeks to come. Therefore, we will be unable to search for any hard copy records that may or may not exist in employees' office spaces. Therefore, I am writing to ask you to agree to an extension of the due date for this FOIA request to at least July 31, 2020.

We have, however, been able to conduct searches for electronic records remotely, and I hope to be able to begin rolling releases of electronic records soon.

Feel free to email or call me to discuss.

Thanks

Michael Curley
Assistant Regional Counsel

US EPA Region 1 – New England | Office of Regional Counsel
5 Post Office Square, Suite 100 | Mailcode: 04-6 | Boston, MA 02109-3912 | (617) 918-1623

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Zachary M. Fabish
Senior Attorney
50 F Street, NW - 8th Floor
Washington, DC 20001
(650) 388 8446
(202) 547-6009 (fax)
zachary.fabish@sierraclub.org

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Zachary M. Fabish
Senior Attorney
50 F Street, NW - 8th Floor
Washington, DC 20001
(650) 388 8446
(202) 547-6009 (fax)
zachary.fabish@sierraclub.org

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Senior Attorney
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zachary.fabish@sierraclub.org

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Zachary M. Fabish
Senior Attorney
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