



September 12, 2025

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Via Email: DOJ.OIP.FOIA@usdoj.gov

Subject: Energy Department's "still interested" policy violates FOIA and OIP's guidance

Dear Chief of Staff O'Neill,

On August 14, 2025, the Department of Energy published a notice titled "Freedom of Information Act (FOIA) 'Still Interested' Inquiry" in the Federal Register.¹ The undersigned groups oppose Energy's new policy, as it violates the Freedom of Information Act, Energy Department FOIA regulations, and the Office of Information Policy's guidance governing "still interested" inquiries.²

The Department of Energy's (DOE) plan does not align with the requirements set by the Freedom of Information Act.³ Specifically, the public records law requires that:

each agency, upon any request for records which (i) reasonably describes such records and (ii) is made in accordance with published rules stating the time, place, fees (if any), and procedures to be followed, **shall make the records promptly available to any person.**⁴ (emphasis added)

Simply stated, if an individual makes a FOIA request, the law imposes a mandatory duty on an agency to produce records responsive to the FOIA requester, unless it meets one of the nine FOIA exemptions outlined in the law.⁵ There is no mention in the law about closing out cases that were filed a year, or years, ago. In fact, FOIA requires that an agency determine within 20 days whether it will "comply" with the request and respond

¹ Notice of the Department of Energy Freedom of Information Act (FOIA) "Still Interested" Inquiry, 90 Fed. Reg. 39187 (August 14, 2025), <https://www.govinfo.gov/content/pkg/FR-2025-08-14/pdf/2025-15490.pdf>.

² 5 U.S.C. § 552 (2025), <https://www.law.cornell.edu/uscode/text/5/552>; 10 C.F.R. § 1004.5(d)(4) (2025), <https://www.law.cornell.edu/cfr/text/10/1004.5>; U.S. Department of Justice, Office of Information Policy, "Limitations on Use of 'Still-Interested' Inquiries," updated July 23, 2021, <https://www.justice.gov/oip/limitations-use-still-interested-inquiries>.

³ 5 U.S.C. § 552 [see note 2].

⁴ 5 U.S.C. § 552(a)(3)(A) [see note 2].

⁵ 5 U.S.C. § 552(b)(1)-(9) [see note 2].

to the FOIA requester. An agency's lengthy delay in responding to a request is not one of the exemptions, and such a delay runs counter to the law's emphasis on a speedy determination and the law's intent to share information with the public.⁶

Yet, Energy's notice states:

Requesters who submitted a FOIA request to DOE HQ at any time prior to October 1, 2024 (FY25), that is still open and is not under active litigation with DOE (or another Federal agency) shall email *StillInterestedFOIA@hq.doe.gov* to continue processing of the FOIA request. Please note that the foregoing applies to FOIA requests submitted to another agency, which were transferred to DOE and provided with a DOE control number.⁷

The DOE's notice says that FOIA requesters would receive notice of the policy change and requirements to keep their request active, including mandatory email responses rather than other types of responses.⁸

"Still interested" letters from agencies to requesters are not new, and they remain "controversial" and legally questionable.⁹ President George W. Bush opened the door to agencies closing out requests that they had delayed responding to for years when he signed Executive Order 13392 in 2005.¹⁰ Although the intent of that order was to improve the disclosure of government information, including more proactive disclosures, Bush's order mentioned that agencies could create activities "to eliminate or reduce the agency's FOIA backlog, including (as applicable) changes that will make the processing of FOIA requests more streamlined and effective[.]"¹¹

The result was agencies issued "still interested" letters to requesters to clean out their backlogs. After years of delays, some foot dragging by agencies, and the underfunding of FOIA offices, backlogs were substantial. A requester who may have moved, changed emails, or was otherwise unreachable had their request(s) closed by the agency, sometimes with as little as a week's notice.¹²

Due to the open government law's silence on "still interested" letters and the legal uncertainty about their use, the Department of Justice, Office of Information Policy, issued guidance to inform agencies about limits on the use of the letters.¹³ The guidance states that FOIA requests should be "ultimately processed and a final response is sent[.]"

⁶ "What is the FOIA?" FOIA.gov, accessed September 2, 2025, <https://www.foia.gov/faq.html>.

⁷ 90 Fed. Reg. 39187 [see note 1].

⁸ 90 Fed. Reg. 39187 [see note 1].

⁹ "Agencies want to know: Are you still interested?," Reporters Committee for Freedom of the Press, Fall 2014, <https://www.rcfp.org/journals/news-media-and-law-fall-2014/agencies-want-know-are-you-st/>.

¹⁰ Executive Order No. 13,392, 70 Fed. Reg. 75,373 (December 19, 2005), <https://www.govinfo.gov/content/pkg/FR-2005-12-19/pdf/05-24255.pdf>; "Agencies want to know: Are you still interested?" [see note 9].

¹¹ Executive Order No. 13,392, 70 Fed. Reg. 75,375 [see note 10].

¹² "Agencies want to know: Are you still interested?" [see note 9].

¹³ "Limitations on Use of 'Still-Interested' Inquiries" [see note 2]; "Implementation Checklist for OIP Guidance on 'Still-Interested' Inquiries," U.S. Department of Justice, Office of Information Policy, updated July 23, 2021, <https://www.justice.gov/oip/implementation-checklist-oip-guidance-still-interested-inquiries>.

unless “where the passage of time or a change in circumstance gives rise to a question of whether a FOIA requester is still interested in obtaining the records that are responsive to a request.”¹⁴ Such a determination may be made when an agency has a “reasonable basis to conclude that the requester’s interest in the records may have changed.”¹⁵

Justice further stated that “*no shorter than thirty (30) working days*” be given to a requester to respond and “no rigid requirements” imposed on a requester to respond.¹⁶ More than one method of communication with requesters was also advised to ensure that “requesters are not in any way disadvantaged” by the use of the “still interested” letters and the possibility that their government information request would be closed.¹⁷ One way to ensure that a requester isn’t disadvantaged is to reopen a request if the requester responds in a reasonable time after the FOIA request was closed.¹⁸

The Energy Department’s policy breaks every part of Justice’s guidance and checklist. Energy has no reasonable basis for questioning the large majority of FOIA requests, some of which were filed less than a year ago. Energy also requested less than 30 working days and outlined the rigid requirement to respond by email only, which might not be the preferred method for requesters to communicate with the agency. The agency’s policy also didn’t include any mention of reopening a request if such an appeal is made within a reasonable time after the FOIA’s closure.

This policy will disadvantage requesters and is nothing more than an attempt to conceal information from the public. We request that you mandate Energy to rescind its policy, as it violates the openness law. At best it violates Justice’s express guidance limiting “still interested” letters. Our groups fear that the Energy policy is only the beginning, and other agencies will follow suit.

Thank you for your time and consideration. If you have any questions, please contact Scott Amey at the Project On Government Oversight (scott.amey@pogo.org).

Sincerely,

Center for Biological Diversity
Citizens for Responsibility and Ethics in Washington (CREW)
David Bahr, Bahr Law Offices
Defending Rights & Dissent
Freedom of the Press Foundation
Government Accountability Project (GAP)
Government Information Watch
Project On Government Oversight (POGO)
Public Citizen

¹⁴ “Limitations on Use of ‘Still-Interested’ Inquiries” [see note 2].

¹⁵ “Limitations on Use of ‘Still-Interested’ Inquiries” [see note 2].

¹⁶ “Limitations on Use of ‘Still-Interested’ Inquiries” [see note 2].

¹⁷ “Limitations on Use of ‘Still-Interested’ Inquiries” [see note 2].

¹⁸ “Limitations on Use of ‘Still-Interested’ Inquiries” [see note 2].

Public Employees for Environmental Responsibility (PEER)

cc: Russell Vought, Director of the Office of Management and Budget
Chairman Chuck Grassley, Senate Committee on the Judiciary
Ranking Member Dick Durbin, Senate Committee on the Judiciary
Chairman Jim Jordan, House Judiciary Committee
Ranking Member Jamie Raskin, House Judiciary Committee
Chair Mike Quigley, Congressional Transparency Caucus
Vice Chair James Comer, Congressional Transparency Caucus
Alina M. Semo, Director of the Office of Government Information Services