



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

Washington, D.C. 20460

OFFICE OF
GENERAL COUNSEL

Mr. Carl Malamud
President
Public.Resource.Org
1005 Gravenstein Highway North
Sebastopol, CA 95472

Re: Freedom of Information Act Request # EPA-HQ-2015-009263

Dear Mr. Malamud:

This letter concerns the above-referenced Freedom of Information Act (FOIA) request received by the U.S. Environmental Protection Agency (EPA) on July 22, 2015. You seek certain records related to a former employee, Dr. Mary McKiel, whom you indicate served as the Agency's Standards Executive from 1993 through 2013 and also served on the Board of Directors of the American National Standards Institute (ANSI) and the ASTM International. You referenced an Office of Government Ethics Advisory, LA-13-05 (April 9, 2013), that addressed a conflict of interest exemption for official participation in nonprofit organizations. In particular, you seek EPA records related to:

- (1) "any ... memoranda or supporting documents leading to the issuance of ...[a memorandum of understanding between the agency, the employee and the nonprofit organization]" if she served in her official EPA capacity;
- (2) "amounts and nature of ... reimbursements [of travel expenses] from ANSI and ASTM International; and
- (3) "any memoranda, email, or other records that discuss [limitations or prohibitions] for Dr. McKiel"

The Office of General Counsel has concluded its search for records responsive to your request and is providing them with this letter. Dr. McKiel served as an officer of the national standard setting organization in her official EPA capacity consistent with OMB Circular No. 119-A and 18 U.S.C. § 208. She was not permitted to participate in the internal management of the organization.

There is no cost to process your request.

This letter concludes our response to your request. You may appeal this response to the National Freedom of Information Officer, U.S. EPA, FOIA and Privacy Branch, 1200 Pennsylvania Avenue, N.W. (2822T), Washington, DC 20460 (U.S. Postal Service Only), FAX: (202) 566-2147, e-mail: hq.foia@epa.gov. Only items mailed through the U.S Postal Service may be delivered to 1200 Pennsylvania Avenue, N.W. If you are submitting your appeal via hand delivery, courier service or overnight delivery, you must address your correspondence to 1301 Constitution Avenue, N.W., Room 6416J, Washington, DC 20001. Your appeal must be made in writing, and it must be submitted no later than 30 calendar days from the date of this letter. The Agency will not consider appeals received after the 30 day calendar limit. The appeal letter should include the tracking number(s) listed above. For quickest possible handling, the appeal letter should be marked "Freedom of Information Act Appeal."

If you have any questions concerning this response, please contact me at (202) 564-1786.

Sincerely,

A handwritten signature in blue ink, appearing to read "Justina Fugh", with a stylized flourish at the end.

Justina Fugh
Senior Counsel for Ethics

enclosures



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

OFFICE OF
ENVIRONMENTAL INFORMATION

JUL 29 2015

Mr. Carl Malamud
Public.Resource.Org
1005 Gravenstein Hwy N
Sebastopol, CA 95472

Re: Freedom of Information Act Request – EPA-HQ-2015-009263

Dear Mr. Malamud:

This is in response to your request for a fee waiver in connection with your Freedom of Information Act (FOIA) request to the U.S. Environmental Protection Agency (EPA) seeking copies of records regarding Dr. Mary C. McKiel's relationship with the American National Standards Institute (ANSI) and the American Society for Testing and Materials (ASTM) International.

We have reviewed your request, and based on the information provided in your letter, we are denying your request for a fee waiver. You have not demonstrated that the release of the information would significantly contribute to the public understanding. As a result of you failing to meet this criteria, accordingly, there is no need to address the remaining prongs of the fee waiver criteria.

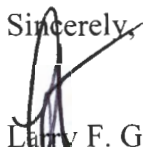
The Office of General Counsel (OGC) will be responding to your information request. You have been placed in the "other" fee category, and will be charged for the costs of search time and duplication, excluding the first two hours of search time and the first 100 pages of duplication. If the estimated costs exceed \$25.00, the OGC will contact you regarding the cost of processing your request and seek an assurance of payment. They will be unable to process your request until they receive your assurance of payment.

Under the FOIA, you have the right to appeal this fee waiver denial determination to the National Freedom of Information Office, U.S. EPA, FOIA and Privacy Branch, 1200 Pennsylvania Avenue, N.W. (2822T), Washington, DC 20460 (U.S. Postal Service Only), or E-mail:foia_hq@epa.gov. Only items mailed through the United States Postal Service may be delivered to 1200 Pennsylvania Avenue, NW. If you are submitting your appeal via hand delivery, courier service or overnight delivery, you must address your correspondence to 1301 Constitution Avenue, N.W., Room 6416J, Washington, DC 20004. Your appeal must be made

in writing, and it must be submitted no later than 30 calendar days from the date of this letter. The Agency will not consider appeals received after the 30 calendar day limit. The appeal letter should include the request number listed above. For quickest possible handling, the appeal letter and its envelope should be marked "Freedom of Information Act Appeal."

Should you choose to appeal this determination, please be sure to fully address all factors required by EPA's FOIA Regulations, located at 40 C.F.R. § 2.107(l), in your appeal. If you have any questions concerning this determination please contact me at (202) 566-1667.

Sincerely,

A handwritten signature in dark ink, appearing to be "Larry F. Gottesman", written over a circular stamp or seal.

Larry F. Gottesman
National FOIA Officer

, \$request.toAgency.state.code
Carl Malamud
Public.Resource.Org
1005 Gravenstein Hwy N
Sebastopol, CA 95472

March 29, 2016

Dear Carl Malamud,

EPA-HQ-2015-009263 has been processed with the following final disposition: Full grant.

Sincerely,

Justina Fugh
OGC Law Groups-Ethics Office

FOIA Invoice

U.S Environmental Protection Agency
1200 Pennsylvania Ave, NW
Washington, DC 20460

Mail Payment to USEPA, FOIA and Miscellaneous Payments, Cincinnati Finance Center P.O. BOX 979078 St. Louis, MO 63197-9000		FOIA Tracking Number EPA-HQ-2015-009263	
		Invoice Date 03/29/2016	
Requester Contact Information Carl Malamud Public.Resource.Org 1005 Gravenstein Hwy N Sebastopol, CA 95472 carl@media.org 707-827-7290		Description of Records Requested This is a request for information about the service of Dr. Mary C. McKiel, who served as Standards Executive for EPA, on two outside boards of directors.	
Request Received	Date 07/22/2015	By OGC Law Groups-Ethics Office	
Request Fulfilled by Agency	Date 03/29/2016	By Justina Fugh	
Comments/Instructions			
Request Fee Category Other			
Description of Costs		Quantity	Amount (USD)
Costs Sub-total			\$0.00
		AMOUNT DUE	\$0.00

Status >>>

Disapproved by Approving Official - Returned to Traveler

<<< Status

Traveler Information (click here to open/close) - Signed by Mary McKiel/DC/USEPA/US on...

**EPA**Approval to Accept Travel
Under Ethics Reform Act of 1989**Event Location** Jacksonville, FL**Traveler's Role** ⓘTraveler is giving several presentations
and meeting with standards
committees☒ Official Duty ☐ Outside Activity**Travel Starts** 10/21/2013**Travel Ends**

10/25/2013

Event Sponsor(s) ⓘ ASTM International**Purpose of Event** ⓘStandards committee week for about
30 different technical standards
including a workshop on sustainability
standards**DEO or designee** Angela Hofmann**Employee Name** ⓘ Mary McKiel**Spousal expenses
included?**☐ Yes ☒ No**Title** Standards Executive**Organization** OCSPP,OAA, IO**Phone Number** 202-564-0532**Who is the non-federal person(s) or entity(s) paying travel expenses?** ⓘ**Name of Organization:** ASTM International**Address:** 100 Barr Harbor Drive, West Conshohocken, PA**What kind of entity is this?** ⓘ
☐ for-profit ☐ state/local government ☐ College/University
☒ not for-profit ☐ foreign government ☐ Other (explain below)

Describe the entity (source) paying travel expenses. If the source of the travel expenses is an organization, describe the membership of the organization. For example, the "Center for Sound Science" may be largely made up of companies which produce chemicals regulated by your program or interest groups who take a position on our policies or regulations. (You can attach files below.)

Is this source a party to a matter that is pending before you for decision, such as a contract or assistance agreement matter, permit, license, etc.? *If "Yes", then acceptance of travel expenses cannot be approved*

☐ Yes ☒ No

Is this source paying the travel through an EPA contract, Federal assistance agreement OR FEDERAL GRANT (including a recipient's matching share)? *If "Yes", then acceptance of travel expenses cannot be approved* ⓘ

☐ Yes ☒ No

Is this source otherwise affected by EPA matters in which you participate?

☒ Yes ☐ No

If "Yes," describe the matter and attach explanation (below). ⓘ

☒ Explain (below left)

The source is one source of voluntary standards which the agency can use under the National Tech Transfer and Advancement Act but use of these standards is strictly voluntary by EPA and my role does not relate to the choice of standards but to helping EPA be aware of the legal ability of the agency to use such standards from this and many hundreds of other standards organizations if we wish.

Itemization of benefits ⓘ**Amount & METHOD of payment** ⓘ**IN KIND****IN CASH**

ticket, meals etc., est. the \$

must be a check etc. made out to
EPA

Common carrier transportation

\$316.00

\$0.00

Meals

\$100.00

\$0.00

Lodging

\$0.00

\$0.00

Local transportation	\$0.00	\$0.00
Waiver of fees ⓘ	\$0.00	\$0.00
Other (specify)	<u>\$0.00</u>	<u>\$0.00</u>
Sub Total	\$416.00	Sub Total \$0.00

TOTAL →→→→→ \$416.00

(NOTE: For travel outside the United States, different rules may apply. Check with your ethics advisor.)

Does this amount exceed the amount payable under Federal Travel Regulations? ☐ Yes ☒ No

(see <http://www.gsa.gov> for per diem rates)

Any other explanations or attachments ⓘ

ASTM routinely pays for the airfare for speakers and committee chairs, whether private sector or government.

Traveler's Certification

By:  **Mary McKiel**

Date: **09/30/2013 04:14 PM**

See INSIDE for DEO Yes/No Recommendation - Signed by Angela Hofmann/DC/USEPA/US...

DEO Recommendation

☒ I have reviewed this travel form and recommend approval.

Approved By: Angela Hofmann

Date: **10/17/2013**

Text Comments:

Additional Attachments / Explanations

Approving Official's Yes/No Certification (is INSIDE) - Signed by Jennie Keith/DC/USEPA/U...

Approving Official's Certification

NOT-Approved By: Jennie Keith

Date: **10/18/2013**

☐ **Hold Pending Review**

NOTE FROM APPROVING OFFICIAL:

EPA will pay travel expenses. See email exchange between Justina Fugh and traveler. Therefore, OGC/Ethics is disapproving this ethics travel form. No further action regarding this form required.

Additional Attachments / Explanations:

Fugh, Justina

From: Fugh, Justina
Sent: Friday, October 18, 2013 2:53 PM
To: McKiel, Mary; Robinson, David
Cc: Hofmann, Angela; Keith, Jennie
Subject: RE: request for OGC to approve travel from ASTM -- denied on these facts

You are, as always, a delightful client, Mary!

From: McKiel, Mary
Sent: Friday, October 18, 2013 2:51 PM
To: Fugh, Justina; Robinson, David
Cc: Hofmann, Angela; Keith, Jennie
Subject: Re: request for OGC to approve travel from ASTM -- denied on these facts

Justina,
Hi. OK by me, I appreciate your help. I am going to amend my TA. Best that way.

Thanks,
Mary

From: Fugh, Justina
Sent: Friday, October 18, 2013 2:49:07 PM
To: McKiel, Mary; Robinson, David
Cc: Hofmann, Angela; Keith, Jennie
Subject: RE: request for OGC to approve travel from ASTM -- denied on these facts

Hi Mary,
I am still reluctant to approve in the absence of your own management because, as I said, this is not what we've ever considered for you before. I would need to hear from your management and also see the bylaws to show that ASTM does in fact regularly pay for travel expenses in order to step in at this late date. My preference, then, is that you instead continue to travel at EPA's expense.
Justina

Justina Fugh | Senior Counsel for Ethics | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

From: McKiel, Mary
Sent: Friday, October 18, 2013 2:45 PM
To: Fugh, Justina; Robinson, David
Cc: Hofmann, Angela; Keith, Jennie
Subject: Re: request for OGC to approve travel from ASTM -- denied on these facts

Justina,

This is not a trip where I am acting as chair of the Board but rather chair of a technical committee. I have not been one of the tech committee chairs before. This meeting comes more directly from the NTTAA. Does that make a difference? If not, I will go ahead and amend my travel.

Thanks
Mary

From: Fugh, Justina
Sent: Friday, October 18, 2013 12:08:12 PM
To: McKiel, Mary; Robinson, David
Cc: Hofmann, Angela; Keith, Jennie
Subject: request for OGC to approve travel from ASTM -- denied on these facts

Hi there,
I understand that Ms. McKiel, who serves as part of her official EPA duties as the Chairman of ASTM International, requests approval to accept ASTM travel dollars to attend a conference. We expect that, at this meeting, she will be performing her EPA duties, which necessarily include serving as the chairman of the board. She writes that ASTM typically provides travel expenses to its board members, but OGC notes that this is the first time ever that Ms. McKiel has requested such approval. She has never in the past sought acceptance of travel expenses from OGC, so we assume that her office has instead paid for her travel using EPA travel dollars.

In the absence of any indication from your office otherwise, OGC declines to approve the request for acceptance of travel expenses for Ms. McKiel for this trip. Instead, EPA may pay for her travel as it has in the past. If you wish for OGC to reconsider its position, then please contact me. I will be happy to speak to your DAA or AA about it.
Justina

Justina Fugh | Senior Counsel for Ethics | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772



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

AUG 2 2012

OFFICE OF GENERAL COUNSEL

Mr. Claude D. Convisser
Plant Oil Powered Diesel Fuel Systems, Inc.
716 Commercial St., S.E.
Albuquerque, New Mexico 81502

Re: ASTM International Board Membership of EPA Employee Mary C. McKiel

Dear Mr. Convisser:

On behalf of the United States Environmental Protection Agency (EPA), thank you for your letter of June 14, 2012, in which you raised concerns about whether Ms. Mary C. McKiel may serve as the Vice Chairman of the Board of Directors of ASTM International while simultaneously serving as an EPA employee. I appreciate your concern but wish to reassure you that Ms. McKiel's service as an officer of this voluntary standard setting organization is consistent with her official duties and does not violate any federal ethics law or regulation.

Your concern has been addressed by several federal agencies in the past, all of which conclude that Ms. McKiel's participation does not raise any federal ethics concerns. In 1998, the Office of Management and Budget issued Circular No. A-119 to allow Federal agencies to provide support to voluntary consensus standards bodies, including the active participation of federal personnel. The Circular defines active participation as "full involvement in discussions and technical debates, registering of opinions and, if selected, serving as chairpersons or in other official capacities." OMB Circular No. 119-A, paragraph 6(f), February 10, 1998.

In addition, the Office of Legal Counsel (OLC) in the Department of Justice has examined whether federal employees may serve on boards of outside organizations. Where the non-federal entity is involved in standard-setting activities in which Congress directed Federal agencies to participate, OLC concluded that "employees may serve on these outside boards without running afoul of [the federal conflict of interest statute] 18 U.S.C. § 208" See OLC Memorandum for the General Counsel of the Office of Government Ethics, "Application of 18 U.S.C. § 208 to Service by Executive Branch Employees on Boards of Standard-Setting Organizations," August 24, 1998. The Office of Government Ethics circulated this OLC opinion to all executive branch ethics officials in its Memorandum for Designated Agency Ethics Officials, from Stephen D. Potts, Director Office of Government Ethics, "Application of 18 U.S.C. § 208 to Service on Boards of Standard-Setting Organization," September 2, 1998.

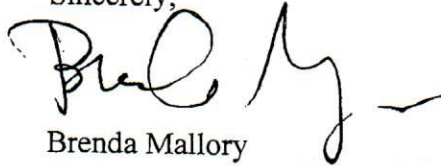
Provided that the federal employee does not participate in the internal management of the voluntary standard setting organizations, then the employee is permitted to participate

actively "on an equal basis with other members." OMB Circular No. 119-A, paragraph 6(f), February 10, 1998.

In accordance with these opinions, EPA concludes that Ms. McKiel's service as the Vice Chairman of the Board of Directors of ASTM International is entirely consistent with her EPA duties and responsibilities.

If you have any questions regarding this response, please contact Justina Fugh, Senior Counsel for Ethics, at fugh.justina@epa.gov or 202 564 1786.

Sincerely,

A handwritten signature in black ink, appearing to read "Brenda Mallory", followed by a horizontal line.

Brenda Mallory
Designated Agency Ethics Official and
Principal Deputy General Counsel

cc: Mary McKiel



Re: A couple of questions 
Mary McKiel to: Justina Fugh

09/06/2012 09:56 AM

Justina...thanks so very much for your responses. Very helpful!

Mary

Justina Fugh

Hi Mary, Thanks for the clarification. See revi...

09/06/2012 09:30 AM EDT

From: Justina Fugh
To: Mary McKiel
Cc:
Date: 09/06/2012 09:30 AM EDT
Subject: Re: A couple of questions

Hi Mary,
Thanks for the clarification. See revised answers to your questions, below.
Justina

Justina Fugh | Senior Counsel for Ethics | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308
Ariel Rios North | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone
202-564-1786 | cell 202-731-3631 | fax 202-564-1772

1. I'm going to be interviewed for the ASTM magazine in October and they will feature me on the cover. They do this for every incoming chairman of the board. The questions in the magazine will focus on ASTM, their standards, what the future holds and so on and most likely some questions on how EPA uses ASTM standards. I feel comfortable with the content but my question is this: can the cover show me with anything of EPA in the background such as our logo or me in front of the East Building entrance sign or anything of that nature?

ADDENDUM: Regarding my position as chair, I recuse myself from discussions and decisions regarding internal management which are issues not discussed at board meetings. I preside over meetings of the Board dealing with discussions of ASTM standards activities and developments where we receive reports from staff and offer ideas and opinions based on what we believe our constituents want or would benefit the US in general. Internal issues such as staff deployment or salaries take place at meetings that don't involve the whole board and I am not part of them. Several government employees over the years have been chairs and it is understood that we can't get involved in those things.

JUSTINA: You serve on the board in your official EPA capacity, but properly recuse yourself from engaging in any internal issues. Instead, you focus on ASTM standards activities and developments only. Your service is therefore entirely in your EPA capacity, so you may mention EPA in your interview, you may be identified solely by your EPA position and title, you may allow the EPA seal to be included in your picture and you may conduct the interview on EPA property and on EPA time.

2. Several people have come to me asking about being subject to FOIA if they are working on a standards committee. There have been recent cases where an EPA member of a standards committee who has documentation pertinent to the committee during the process of standards development has been told by an outsider that he/she

will be subject to FOIA for that documentation. I would generally think that our folks would NOT be subject to FOIA especially since the documents belong to the standard's committee however ownership may not be the pertinent point.

ADDENDUM: [This] has come up as a question while I am working with a few other folks in drafting a guide for EPA participation with standards bodies. The example situation that someone came up with was: if an EPA person is on a committee developing a test method and volunteers to do some of the analytical work required for establishing, let's say, statistical parameters in the draft standard, can that person's work be subject to FOIA?

JUSTINA: If the EPA employee is serving on the standards board as part of official EPA duty, then any work s/he conducts is undertaken as part of that official duty. There is no "volunteering" in one's outside capacity while conducting EPA business. Therefore, the work undertaken by the EPA employee is deemed part of official duty and, I believe, therefore subject to FOIA. You may double check my answer with the FOIA attorneys.

Mary McKiel

Hi Justina, Thanks for your responses. Regardi...

09/05/2012 05:13:07 PM

From: Mary McKiel/DC/USEPA/US
To: Justina Fugh/DC/USEPA/US@EPA
Date: 09/05/2012 05:13 PM
Subject: Re: A couple of questions

Hi Justina,

Thanks for your responses. Regarding my position as chair, I recuse myself from discussions and decisions regarding internal management which are issues not discussed at board meetings. I preside over meetings of the Board dealing with discussions of ASTM standards activities and developments where we receive reports from staff and offer ideas and opinions based on what we believe our constituents want or would benefit the US in general. Internal issues such as staff deployment or salaries take place at meetings that don't involve the whole board and I am not part of them. Several government employees over the years have been chairs and it is understood that we can't get involved in those things.

Regarding the FOIA question, it does not come from the radiation group nor does it have anything to do with me. It is something that has come up as a question while I am working with a few other folks in drafting a guide for EPA participation with standards bodies. The example situation that someone came up with was: if an EPA person is on a committee developing a test method and volunteers to do some of the analytical work required for establishing, let's say, statistical parameters in the draft standard, can that person's work be subject to FOIA?

Thanks for your help on these things!

Mary

Justina Fugh

Hi Mary, See notes below, but feel free to call i...

09/05/2012 04:23 PM EDT

From: Justina Fugh
To: Mary McKiel
Cc:
Date: 09/05/2012 04:23 PM EDT
Subject: Re: A couple of questions

Hi Mary,
See notes below, but feel free to call if you'd like to talk instead.
Justina

Justina Fugh | Senior Counsel for Ethics | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308
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JUSTINA: You serve on the board in your official EPA capacity, but how you can be the Chairman while also honoring the requirement that you cannot be involved with the internal workings of the organization. How will you recuse yourself from those activities? I need to know that answer before I can address the question about references to EPA affiliation.

2. Several people have come to me asking about being subject to FOIA if they are working on a standards committee. There have been recent cases where an EPA member of a standards committee who has documentation pertinent to the committee during the process of standards development has been told by an outsider that he/she will be subject to FOIA for that documentation. I would generally think that our folks would NOT be subject to FOIA especially since the documents belong to the standard's committee however ownership may not be the pertinent point.

JUSTINA: If you are talking about the radiation standards committee, then those people do NOT represent EPA but rather serve in their personal capacity, which is VERY DIFFERENT from your situation. If someone FOIA'd EPA for Agency records related to YOUR service, then any responsive documents would have to be turned over. I have no idea what responsibility the outside organization would have to turn over any documents, but EPA documents would be subject to FOIA. In the situation in which individuals serve in their personal capacity, then EPA would likely NOT have any responsive documents.

Mary McKiel

Hi Justina, Hope all is going well. I am hoping y...

09/05/2012 12:17:39 PM

**Re: A couple of questions**

Mary McKiel to: Justina Fugh

09/05/2012 05:13 PM

History:

This message has been replied to.

Hi Justina,

Thanks for your responses. Regarding my position as chair, I recuse myself from discussions and decisions regarding internal management which are issues not discussed at board meetings. I preside over meetings of the Board dealing with discussions of ASTM standards activities and developments where we receive reports from staff and offer ideas and opinions based on what we believe our constituents want or would benefit the US in general. Internal issues such as staff deployment or salaries take place at meetings that don't involve the whole board and I am not part of them. Several government employees over the years have been chairs and it is understood that we can't get involved in those things.

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Thanks for your help on these things!

Mary

Justina Fugh

Hi Mary, See notes below, but feel free to call i...

09/05/2012 04:23 PM EDT

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To: Mary McKiel
Cc:
Date: 09/05/2012 04:23 PM EDT
Subject: Re: A couple of questions

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Justina

Justina Fugh | Senior Counsel for Ethics | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308
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Chairman while also honoring the requirement that you cannot be involved with the internal workings of the organization. How will you recuse yourself from those activities? I need to know that answer before I can address the question about references to EPA affiliation.

2. Several people have come to me asking about being subject to FOIA if they are working on a standards committee. There have been recent cases where an EPA member of a standards committee who has documentation pertinent to the committee during the process of standards development has been told by an outsider that he/she will be subject to FOIA for that documentation. I would generally think that our folks would NOT be subject to FOIA especially since the documents belong to the standard's committee however ownership may not be the pertinent point.

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Mary McKiel

Hi Justina, Hope all is going well. I am hoping y...

09/05/2012 12:17:39 PM

From: Mary McKiel/DC/USEPA/US
To: Justina Fugh/DC/USEPA/US@EPA
Date: 09/05/2012 12:17 PM
Subject: A couple of questions

Hi Justina,

Hope all is going well. I am hoping you can help me with the following two questions.

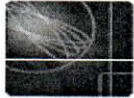
1. I'm going to be interviewed for the ASTM magazine in October and they will feature me on the cover. They do this for every incoming chairman of the board. The questions in the magazine will focus on ASTM, their standards, what the future holds and so on and most likely some questions on how EPA uses ASTM standards. I feel comfortable with the content but my question is this: can the cover show me with anything of EPA in the background such as our logo or me in front of the East Building entrance sign or anything of that nature?

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would NOT be subject to FOIA especially since the documents belong to the standard's committee however ownership may not be the pertinent point.

Thanks for your help and if it's easier to go over this via phone, that's absolutely fine by me just let me know what is convenient for you.

Mary



your e-copy of the signed response to Claude Convisser
Justina Fugh to: Mary McKiel

08/06/2012 02:09 PM



Convisser response AX 12 001 0384.pdf

hard copy was put into interoffice mail to you as well.

Justina Fugh | Senior Counsel for Ethics | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308
Ariel Rios North | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone
202-564-1786 | cell 202-731-3631 | fax 202-564-1772



Re: draft response to Convisser

Justina Fugh to: Mary McKiel

07/21/2012 12:18 AM

Good. I'll cc you and once the letter is signed, you may share with others.

-----Mary McKiel/DC/USEPA/US@EPA wrote: -----

=====
To: Justina Fugh/DC/USEPA/US@EPA
From: Mary McKiel/DC/USEPA/US@EPA
Date: 07/20/2012 06:23PM
Subject: Re: draft response to Convisser
=====

Justina,

I think this looks fine! Thanks so much. Will you be including any cc's? If not, I'd like to share a copy with the NIST folks and with ASTM if there's no prohibition in doing so.

Have a great weekend.

Mary

Mary C. McKiel, Ph.D.
EPA Standards Executive

-----Justina Fugh/DC/USEPA/US wrote: -----

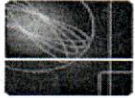
To: Mary McKiel/DC/USEPA/US@EPA
From: Justina Fugh/DC/USEPA/US
Date: 07/20/2012 13:12
Subject: draft response to Convisser

Hi Mary,
here's the draft response to Claude Convisser. I don't yet know who is signing the letter, so I haven't yet inserted the signature block. See what you think.

Justina
Justina Fugh | Senior Counsel for Ethics | Office of General Counsel | US EPA
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ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | cell
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(See attached file: Convisser JF.doc)+

[attachment "Convisser JF.doc" removed by Mary McKiel/DC/USEPA/US]



draft response to Convisser

Justina Fugh to: Mary McKiel

07/20/2012 01:12 PM

Hi Mary,
here's the draft response to Claude Convisser. I don't yet know who is signing the letter, so I haven't yet inserted the signature block. See what you think.

Justina

Justina Fugh | Senior Counsel for Ethics | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308
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Convisser JF.doc+



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

OFFICE OF GENERAL COUNSEL

Mr. Claude D. Convisser
Plant Oil Powered Diesel Fuel Systems, Inc.
716 Commercial St., S.E.
Albuquerque, New Mexico 81502

Re: ASTM International Board Membership of EPA Employee Mary C. McKiel

Dear Mr. Convisser:

On behalf of the United States Environmental Protection Agency (EPA), thank you for your letter of June 14, 2012, in which you raised concerns about whether Ms. Mary C. McKiel may serve as the Vice Chairman of the Board of Directors of ASTM International while simultaneously serving as an EPA employee. I appreciate your concern but wish to reassure you that Ms. McKiel's service as an officer of this voluntary standard setting organization is indeed consistent with her official duties and does not violate any federal ethics law or regulation.

Your concern has been addressed by several federal agencies in the past, all of which conclude that Ms. McKiel's participation does not raise any federal ethics concerns. In 1998, the Office of Management and Budget issued Circular No. A-119 to allow Federal agencies to provide support to voluntary consensus standards bodies, including the active participation of federal personnel. The Circular defines active participation as "full involvement in discussions and technical debates, registering of opinions and, if selected, serving as chairpersons or in other official capacities." OMB Circular No. 119-A, paragraph 6(f), February 10, 1998.

In addition, the Office of Legal Counsel (OLC) in the Department of Justice has examined whether federal employees may serve on boards of outside organizations. Where the non-federal entity is involved in standard-setting activities in which Congress directed Federal agencies to participate. OLC concluded that "employees may serve on these outside boards without running afoul of [the federal conflict of interest statute] 18 U.S.C. § 208" See OLC Memorandum for the General Counsel of the Office of Government Ethics, "Application of 18 U.S.C. § 208 to Service by Executive Branch Employees on Boards of Standard-Setting Organizations," August 24, 1998. The Office of Government Ethics circulated this OLC opinion to all executive branch ethics officials in its Memorandum for Designated Agency Ethics Officials, from Stephen D. Potts, Director Office of Government Ethics, "Application of 18 U.S.C. § 208 to Service on Boards of Standard-Setting Organization," September 2, 1998.

Provided that the federal employee does not participate in the internal management of the voluntary standard setting organizations, then the employee is permitted to participate actively "on an equal basis with other members." OMB Circular No. 119-A, paragraph 6(f), February 10, 1998.

In accordance with these opinions, EPA concludes that Ms. McKiel's service as the Vice Chairman of the Board of Directors of ASTM International is entirely consistent with her EPA duties and responsibilities. Therefore, we will not seek her resignation from the position nor ask her to cease to serve on the ASTM International Board of Directors.

If you have any questions regarding this response, please contact Justina Fugh, Senior Counsel for Ethics, at fugh.justina@epa.gov or 202 564 1786.

Sincerely yours,

Brenda Mallory
Designated Agency Ethics Official and
Principal Deputy General Counsel

cc: Mary McKiel