



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, D.C. 20460

OFFICE OF
GENERAL COUNSEL

April 28, 2020

Erin Thomas
Hall and Associates
1629 K Street NW
Suite 220
Washington, DC 20006

Re: Freedom of Information Act Appeal No. EPA-HQ-2020-003869 (Request No. EPA-R1-2020-002671)

Dear Ms. Thomas:

I am responding to your March 27, 2020 Freedom of Information Act (FOIA) appeal. You appealed the March 20, 2020 decision of Ken Moraff (“decision”), Water Division Director, Region 1, of the U.S. Environmental Protection Agency (EPA or Agency), to partially deny the request you submitted to EPA on January 31, 2020. Your request sought records related to the Draft NPDES Great Bay General Permit. Specifically, the request sought:

1. Any existing EPA analysis on the degree of phytoplankton, macroalgae or epiphyte growth that is caused by the existing system TN concentrations or loadings in Great Bay Estuary.
2. Any existing EPA analysis on the degree to which existing phytoplankton, macroalgae or epiphyte growth will be reduced at 100 kg/ha-yr loading to the system. Any records used to develop the General Permit effluent limitations in concluding that TN must be limited on an annual and not growing season basis to protect eelgrasses in the Great Bay system.

Region 1 provided 13 records in full and withheld no information. Your appeal states that: “[Hall and Associates] hereby appeals as arbitrary and capricious (1) EPA’s inadequate search for records, and (2) the excessive assessed fees to obtain the responsive records under FOIA.” Appeal at 2.

I have carefully considered your request, EPA’s decision, and your appeal. For the reasons set forth below, I have determined that your appeal should be, and is, denied.

The Agency Conducted a Reasonable Search.

Your appeal alleges that “EPA’s search was clearly inadequate.” Appeal at 2. Frustration with the outcome of a search does not entitle a FOIA requester to relief. *See Hall & Assocs. v. U.S. Env’tl.*

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Prot. Agency, 77 F. Supp. 3d 40, 48 (D.D.C. 2014). I have confirmed that the Agency conducted a reasonable search. Therefore, your appeal of the adequacy of the Agency's search is denied.

The Agency's Fee Assessment Was Appropriate.

The appeal alleges that the assessed fees of \$196.00 are excessive and arbitrary and capricious. Appeal at 5. On February 24, 2020, the Agency provided you with a fee estimate of \$200 to process this request. On February 28, 2020, you provided an assurance of payment for that amount. I have confirmed that the 7 hours of time billed to respond to your complex request is reasonable. Your appeal of the Agency's fee assessment is denied.

Conclusion

This letter constitutes EPA's final determination on this matter. Pursuant to 5 U.S.C. § 552(a)(4)(B), you may obtain judicial review of this determination by filing a complaint in the United States District Court for the district in which you reside or have your principal place of business, or the district in which the records are situated, or in the District of Columbia. Additionally, as part of the 2007 FOIA amendments, the Office of Government Information Services (OGIS) within the National Archives and Records Administration was created to offer mediation services to resolve disputes between FOIA requesters and Federal agencies as a non-exclusive alternative to litigation. You may contact OGIS in any of the following ways: by mail, Office of Government Information Services, National Archives and Records Administration, Room 2510, 8610 Adelphi Road, College Park, MD, 20740-6001; e-mail, ogis@nara.gov; telephone, 202-741-5770 or 1-877-684-6448; and fax, 202-741-5769.

Should you have any questions concerning this matter, please contact Peter Bermes of my staff at bermes.peter@epa.gov.

Sincerely,



Kevin M. Miller
Assistant General Counsel
General Law Office

cc: Ken Moraff, Director, Water Division, EPA Region 1
Cris Schena, EPA Region 1 FOIA Officer

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