



Department of Energy

Washington, DC 20585

October 4, 2004

The Honorable Henry A. Waxman
Ranking Minority Member
Committee on Government Reform
U.S. House of Representatives
Washington, D.C. 20515-6143

Dear Congressman Waxman:

By letter dated May 7, 2004, you requested that this office investigate the completeness of responses sent by the Department of Energy (DOE) pursuant to a "Seven Member Rule" request. As referenced in my letter of June 2, 2004, we conducted a review of the process utilized by the DOE in preparing the response to your "Seven Member Rule" request.

Our special review has been completed and enclosed is a copy of our letter report issued to the Secretary.

Please let me know if I may be of additional assistance.

Sincerely,

A handwritten signature in black ink, reading "Greg Friedman", is positioned below the word "Sincerely,".

Gregory H. Friedman
Inspector General

Enclosure



Printed with soy ink on recycled paper



Department of Energy

Washington, DC 20585

October 1, 2004

MEMORANDUM FOR THE SECRETARY

FROM:

Greg Friedman
Gregory H. Friedman
Inspector General

SUBJECT:

INFORMATION: Special Report on the "Department's Process for Responding to a Congressional Information Request" OAS-SR-05-01

INTRODUCTION

On January 15, 2004, members of the U. S. House of Representatives, Committee on Government Reform, acting under the "Seven Member Rule" (5 U.S.C. 2954), requested that the Department of Energy provide copies of all communications relating to H.R. 6, the Energy Policy Act of 2003, covering the period November 21, 2003, to January 15, 2004. The members requested all written, electronic, or oral communications between the Department or other executive branch officials and industry lobbyists, representatives of trade associations or interest groups, or other persons outside of the executive branch relating to H.R. 6. This request was preceded by a similar request, dated December 22, 2003, from Representatives Henry A. Waxman and John D. Dingell that raised concerns about the Department's compliance with prohibitions against lobbying contained in 18 U.S.C. 1913, to which the Department responded on January 6, 2004. According to Committee members, the Department's initial response did not provide the information requested and they were prompted to make the second request under the "Seven Member Rule." On February 4, 2004, the Department responded to the Committee member's second request for information.

Subsequently, the Ranking Minority Member and 13 other members of the Committee asked the Office of Inspector General to review the veracity and completeness of the response that the Department sent to members of the Committee. Committee members also requested that the Office of Inspector General examine how the Department's response was researched and reviewed. The Office of Inspector General conducted a fact-finding review, the objective of which was to determine the Department's process for developing its February 4, 2004, response to the congressional request for information.

OBSERVATIONS

Responsible officials indicated that the Department followed its normal process when preparing the February 4, 2004, response to the members of the Committee. Officials in the Office of General Counsel (OGC) and the Executive Secretariat (ES) indicated that they took the request seriously and that they expended a good deal of effort to collect



information and respond in a timely manner. However, the Department does not have a requirement to maintain documentation of research efforts completed in response to congressional data requests. Thus, by necessity, our review was based largely on the recollections of officials involved with the response. Those officials explained that, due to the passage of time, they had only limited recollection of the actual procedures performed. They told us that, to the best of their knowledge, they followed their standard practice when responding to this congressional inquiry. As explained, the process in this case: (i) was limited to searches of certain written and electronic communications for high-level Department officials; (ii) did not include inquiries of lower-level officials outside the offices determined to be the most likely to have information responsive to the request, or other executive branch officials; and, (iii) would not have included direct inquiries of all high-level Department officials to determine whether any contacts were made that were not documented in hard copy or electronic files.

Research and Review Process

Officials told us that normally ES serves as the focal point for directing information requests to the appropriate offices for response. In this case, ES directed the request to OGC because it was closely related to the December 22, 2003, congressional request regarding the Department's compliance with the prohibitions against lobbying. According to OGC officials, they received information submitted by various offices and prepared the response that was sent to Committee members on February 4, 2004.

ES and OGC told us that, while they could not recall who made the determination, a decision was made that the Offices of the Secretary; Deputy Secretary; Under Secretary for Energy, Science, and Environment; Assistant Secretary for Congressional and Intergovernmental Affairs; Scheduling and Advance; and ES were most likely to have information responsive to the request. The Department's response to the Committee members identified the offices that were searched for responsive documents. ES and OGC officials indicated that the Committee members' request letter was provided to these offices with either an oral or e-mail request. Officials stated that responding offices would typically search their phone logs, e-mails, correspondence and subject files, and daily calendars. ES and OGC officials also indicated that it was not their general process to provide specific guidance on how to conduct searches. However, OGC officials stated that they discussed with the Office of Congressional and Intergovernmental Affairs what types of records should be searched to respond to this specific congressional request.

Scope of Research and Review Process

According to ES and OGC officials, they routinely make judgments regarding the scope of their research and review process because of the volume of requests the Department receives and the level of effort required to respond to them. They added that searches for information must be made in a manner that provides timely responses. For these reasons, officials acknowledged that they decided to limit their review to the Department elements most likely to have information responsive to the request. In particular, officials who prepared the response advised us that:

- Program offices, such as the Offices of Fossil Energy and Nuclear Energy, were not included in the information search because the request was directed to offices most likely to have contacts on legislative matters.
- Other executive branch officials outside the Department were not asked about their contacts with industry officials because, according to Department officials, such a search would be outside the Department's capabilities and would be logistically unreasonable. They noted, however, that if other executive branch officials had any communications with outside entities regarding H.R. 6 and had "carbon copied" the Secretary, a record of that communication would likely have been identified in the Department's search of its correspondence files.
- The Department's website was not researched because it was publicly available and information about any relevant contacts would already be available to the congressional requesters. Officials asserted that searches of the calendars for the Secretary, Deputy Secretary and Under Secretary should have identified all speeches related to H.R. 6. However, ES and OGC indicated that the subject of a meeting or speech is not always listed on the calendar and that this lack of specificity might account for missing the two secretarial speeches previously identified by Committee members as responsive to questions raised about H.R. 6.
- While those preparing the February 4, 2004, response directly questioned the Deputy Secretary about industry contacts related to H.R. 6, the Secretary and the Under Secretary were not specifically consulted about such contacts. Rather, the Department's response to the committee members was based on a review of hardcopy and electronic files. Finally, officials told us, and available documentation indicated, that none of the offices other than the Assistant Secretary for Congressional and Intergovernmental Affairs reviewed or concurred in the final response to the Committee members' request.
- Contacts with, or initiated by, congressional officials were omitted because OGC decided that the thrust of the request was that the Department possibly had not complied with prohibitions against lobbying and contacts with Congress as set forth in 18 U.S.C. 1913. Additionally, OGC asserted that members of Congress would not always want their contacts with the Department made public. Further, the Department discussed its decision to exclude communications between members of Congress and the Department of Energy related to H.R. 6 in its February 4, 2004, response to the Committee members.

Documentation of Research and Review Process

According to ES and OGC officials, the Department's process does not require that detailed records be maintained supporting the sources that were searched and the specific methodologies used. As a consequence, Department officials involved in the subject search told us that they found it necessary to rely primarily on their recollection regarding the processing of the response to the Committee members. They acknowledged, as well, that their recollections, after the passage of about eight months, may be incomplete. Further, as previously noted, little documentation was available to support the oral descriptions of the process employed in this case. For example, we did not find evidence of complete responses provided to OGC, which would have explained which files were searched and which could have confirmed whether or not relevant contacts had been identified. Documentation to support reported e-mail searches in the Offices of the Deputy Secretary and Under Secretary were not available, and officials we contacted in these offices could not recall searching for any communications related to the request of the Committee members. However, OGC officials advised us that a senior official in the Office of the Deputy Secretary had searched that office for relevant communications in response to the Committee members' request. Additionally, officials could not provide documentation supporting the reported detailed review of the Secretary's calendar since November 21, 2003. While an Office of Scheduling and Advance official recalled searching the Secretary's calendar for information on energy-related contacts, the official could not recall if anything was found.

In summary, as described by OGC and ES, the Department followed its normal process in responding to the Committee members' information request. However, we were unable to independently confirm the described process because of the lack of detailed records and the incomplete recollection of these officials caused by the passage of time.

We discussed the facts contained above with Department officials who prepared the congressional response and included relevant comments, where appropriate. Our review methodology is described in an attachment to this report.

We appreciate the cooperation of the Department's staff during this review. If you have any questions regarding the matters discussed in this report, please do not hesitate to contact me.

cc: Deputy Secretary
Under Secretary for Energy, Science and Environment
Assistant Secretary for Congressional and Intergovernmental Affairs
General Counsel
Director, Office of the Executive Secretariat

Attachment

SCOPE AND METHODOLOGY

To accomplish our objective we:

- Reviewed the congressional request dated December 22, 2003, from Congressmen Henry Waxman and John Dingell; and the January 15, 2004, request from members of the Committee on Government Reform;
- Reviewed the Department's responses dated January 6 and February 4, 2004, respectively, from the General Counsel and the January 15, 2004, response from the Acting General Counsel;
- Interviewed officials from the Offices of General Counsel and Executive Secretariat involved in coordinating the response to each request;
- Interviewed officials from the Offices of the Deputy Secretary; Under Secretary for Energy, Science and Environment; Congressional and Intergovernmental Affairs; and Scheduling and Advance to determine the processes they used to respond to the request; and,
- Reviewed documents of communications regarding energy related contacts provided by various offices.

This was a special review of the Department's process for responding to a particular inquiry from congressional sources and did not include tests of internal controls and compliance with laws and regulations applicable to audits.