

**SUBPOENA DUCES TECUM (CIVIL) –
ATTORNEY ISSUED**
Commonwealth of Virginia

VA CODE §§ 8.01-413, 10.1-80, 10.1-265
Supreme Court Rules 1.4, 1.9

Case No.: CL-2015-4712

February 29, 2016 at 10:00 a.m.
HEARING DATE AND TIME

Richmond City Circuit Court

Court

400 North Ninth Street, Richmond VA 23219
COURT ADDRESS

Christopher Horner et al.

v./In re:

Rector and Visitors, George Mason University

TO THE PERSON AUTHORIZED BY LAW TO SERVE THIS PROCESS:

You are commanded to summon

Elizabeth Woodley

NAME

4400 University Drive, Merton Hall, Suite 5400

STREET ADDRESS

Fairfax

VA

22030

CITY

STATE

ZIP

TO the person summoned: You are commanded to make available the documents and tangible things designated and described below:

- 1) Copies of all records in the University's email system, in the form of electronic mail, sent to or from Professor Maibach, dated June 1, 2015 to October 9, 2015, which records include any of the following words: "RICO," "Racketeering," "Racketeer," "DoJ," "Prosecute," or "Prosecution." This includes emails that may have been deleted from one location, but which are archived elsewhere.
- 2) Copies of all emails in the University's email system, in the form of electronic mail, sent between Edward Maibach and Elizabeth Woodley, which records are dated between September 24, 2015 and October 30, 2015.

at the Office of Thomas Moncreure, Merton Hall, suite 5400 at 10 a.m. on February 5, 2016

LOCATION

DATE AND TIME

to permit such party or someone acting in his or her behalf to inspect and copy, test or sample such tangible things in your possession, custody or control.

This Subpoena Duces Tecum is issued by the attorney for and on behalf of

Christopher Horner and the Competitive Enterprise Institute

PARTY NAME

Matthew D. Hardin

NAME OF ATTORNEY

314 West Grace Street, Suite 304

OFFICE ADDRESS

Richmond, VA 23220

OFFICE ADDRESS

January 18, 2016

DATE ISSUED

87482

VIRGINIA STATE BAR NUMBER

(804) 608-6456

TELEPHONE NUMBER OF ATTORNEY

(877) 310-3847

FACSIMILE NUMBER OF ATTORNEY

Matthew D. Hardin
SIGNATURE OF ATTORNEY

Notice to Recipient: See page two for further information.

RETURN OF SERVICE (see page two of this form)

TO the person summoned:

If you are served with this subpoena less than 14 days prior to the date that compliance with this subpoena is required, you may object by notifying the party who issued the subpoena of your objection in writing and describing the basis of your objection in that writing.

This SUBPOENA DUCES TECUM is being served by a private process server who must provide proof of service in accordance with Va. Code § 8.01-325.

TO the person authorized to serve this process: Upon execution, the return of this process shall be made to the clerk of court.

NAME:	
ADDRESS:	
<input type="checkbox"/> PERSONAL SERVICE	Tel. No.
Being unable to make personal service, a copy was delivered in the following manner:	
<input type="checkbox"/> Delivered to family member (not temporary sojourner or guest) age 16 or older at usual place of abode of party named above after giving information of its purport. List name, age of recipient, and relation of recipient to party named above:	
<input type="checkbox"/> Posted on front door or such other door as appear to be the main entrance of usual place of abode, address listed above. (Other authorized recipient not found.)	
<input type="checkbox"/> NOT FOUND	, Sheriff
DATE	Deputy Sheriff

CERTIFICATE OF COUNSEL

I, Matthew D. Hardin, counsel for the Petitioners, hereby certify that a copy of the foregoing subpoena duces tecum was mailed (DELIVERY METHOD) to Thomas Moncure, counsel of record for the Respondent on the 18th day of January, 2016.



SIGNATURE OF ATTORNEY

NOTICE: Upon receipt of the subpoenaed documents, the requesting party must, if requested, provide true and full copies of those documents to any other party or to the attorney for any other party, provided the other party or attorney for the other party pays the reasonable cost of copying or reproducing those documents. This does not apply when the subpoenaed documents are returnable to and maintained by the clerk of the court in which the action is pending. Va. Code § 8.01-417

Elizabeth I Woodley

From: Elizabeth I Woodley
Sent: Tuesday, September 29, 2015 2:28 PM
To: Jagadish Shukla; Paul A Dirmeyer; Edward W Maibach; Barry A Klinger; Paul S Schopf; David M. Straus
Cc: Edwin K Schneider
Subject: FOIA Request for E-mails

Good afternoon Professors Shukla, Dirmeyer, Maibach, Klinger, Schopf, and Straus,

My name is Elizabeth Woodley. I am George Mason University's Freedom of Information Act Compliance Officer. I wanted to let you know that I have received a FOIA request for e-mail communications which you may have sent or received from your Mason e-mail address in your capacity as Mason employees from June 1, 2015 to the present which include the keywords "RICO, racketeer, racketeering, DoJ, prosecute, or prosecution".

The FOIA statute covers records which were created "in the course of public business", in your capacity as Mason employees. Good questions to ask yourself to help determine whether a record was created in the transaction of public business are: "Was I paid by George Mason to create this document?" and "Does the document relate to the duties listed in my job description?"

Outside of some narrowly-defined exemptions, all public records are subject to FOIA. Exemptions include: private information, personnel records, student information, and proprietary information.

If you believe you may possess responsive documents, please let me know and send me an estimate of the cost to produce the documents. Please estimate the amount of time you (or another Mason employee as your designee) would spend responding to this request (searching for documents and reviewing them for possible exemptions). Please also tell me your (or your designee's) hourly rate, so that I may charge the requester for your time. Hourly rate is calculated by dividing base salary (without benefits) by 2080 for 12-month employees or 1560 for 9-month employees.

Please do not begin responding to the request until you hear from me. If the cost estimate is high enough I will require the requester to pay a deposit before we begin the response.

Please let me know if you have any questions about this request. I am available by e-mail or phone- my direct line is 703-993-5115. For more information, Mason's FOIA Policy is available here:

http://universitypolicy.gmu.edu/policies/responding-to-virginia-freedom-of-information-act-foia-requests-for-records/?_ga=1.13439028.201496376.1363277436

Thank you,

Elizabeth

Elizabeth Woodley, J.D.
FOIA Compliance Officer
George Mason University
Compliance, Diversity, and Ethics
Phone: (703) 993-5115

Elizabeth I Woodley

From: Elizabeth I Woodley
Sent: Tuesday, September 29, 2015 3:18 PM
To: Edward W Maibach
Subject: Second FOIA Request

Good afternoon Professor Maibach,

As I told you in the e-mail I just sent, I am Mason's FOIA Compliance Officer. I have just received a second FOIA request for records, including the following records related to you from the years 2011-2015:

- "1) applications for and "written authorization" of waiver of conflicts of interest, and/or from the prohibition on outside employment and paid consulting exceeding the equivalent of one day per work week without written authorization;
- 2) approvals of the appropriate collegiate dean or institute director for Prof. Maibach to use university facilities, equipment, supplies or computer time in their consulting;
- 3) list of known SFIs (and those of his spouse and/or dependent children) related to the investigator's institutional responsibilities;
- 4) conflict of interest certifications; and
- 5) conflict of interest management plans."

Do you know if any such records exist and, if so, who has custody of them? If I locate any responsive records, I will send them to you before I send out the FOIA response so that you may review them for exemptions (private information, etc.). The University must respond to this second request by October 6th, or we may extend the deadline to October 15th.

Again, thank you for your help and please let me know if you have questions.

Elizabeth

Elizabeth Woodley, J.D.
FOIA Compliance Officer
George Mason University
Compliance, Diversity, and Ethics
Phone: (703) 993-5115

Elizabeth I Woodley

From: Edward W Maibach
Sent: Tuesday, September 29, 2015 3:36 PM
To: Elizabeth I Woodley
Subject: Re: Second FOIA Request

Hi Elizabeth,

This is a curious set of requests. Here are my initial reactions:

"1) applications for and "written authorization" of waiver of conflicts of interest, and/or from the prohibition on outside employment and paid consulting exceeding the equivalent of one day per work week without written authorization;

I have never applied for such an exception, because I do relatively little paid consulting.

2) approvals of the appropriate collegiate dean or institute director for Prof. Maibach to use university facilities, equipment, supplies or computer time in their consulting;

Other than my laptop, which is owned by Mason, I can't think of anything else involving Mason that I would have used in my consulting.

3) list of known SFIs (and those of his spouse and/or dependent children) related to the investigator's institutional responsibilities;

None of us have any SFI's related to my institutional responsibilities.

4) conflict of interest certifications; and

I am required to file a COI certification every time I get a grant. In no instance did I ever claim a conflict of interest, because I have none.

5) conflict of interest management plans."

Not applicable to me.

Is this sufficient?

Any idea what they are fishing for with this request?

All the best,

Ed

p.s. I suppose it is obvious, but the people who are filing these requests have every intention of trying to hurt Shukla and me. We've been told that quite directly by people indirectly involved in the action.

Edward Maibach, MPH, PhD
University Professor, Department of Communication
Director, Center for Climate Change Communication
George Mason University, MS 6A8
Fairfax, VA 22030
www.climatechangecommunication.org

From: Elizabeth I Woodley
Sent: Tuesday, September 29, 2015 3:17 PM
To: Edward W Maibach
Subject: Second FOIA Request

Good afternoon Professor Maibach,

As I told you in the e-mail I just sent, I am Mason's FOIA Compliance Officer. I have just received a second FOIA request for records, including the following records related to you from the years 2011-2015:

- "1) applications for and "written authorization" of waiver of conflicts of interest, and/or from the prohibition on outside employment and paid consulting exceeding the equivalent of one day per work week without written authorization;
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Do you know if any such records exist and, if so, who has custody of them? If I locate any responsive records, I will send them to you before I send out the FOIA response so that you may review them for exemptions (private information, etc.). The University must respond to this second request by October 6th, or we may extend the deadline to October 15th.

Again, thank you for your help and please let me know if you have questions.

Elizabeth

Elizabeth Woodley, J.D.
FOIA Compliance Officer
George Mason University
Compliance, Diversity, and Ethics
Phone: (703) 993-5115

Elizabeth I Woodley

From: Edward W Maibach
Sent: Tuesday, September 29, 2015 4:01 PM
To: Elizabeth I Woodley; Jagadish Shukla; Paul A Dirmeyer; Barry A Klinger; Paul S Schopf; David M. Straus
Cc: Edwin K Schneider
Subject: Re: FOIA Request for E-mails

Hi Elizabeth,

Two questions of clarification, the easy one first:

1) How would you like us to share these emails with you? Printed documents?

2) The exemptions criteria seems quite narrow (private information, personnel records, student information, and proprietary information) but the "in the course of public business" criteria seems quite broad. How should we reconcile the difference?

In my view, I was not paid by Mason to create the document (a letter) that is of interest to the requester, nor does the document directly relate to my job description in that it is neither teaching, research nor service -- activities which consume far more than 40 hours of my time each week during the school year. Rather, it was written in my capacity as a concerned citizen, in my spare time. Moreover, it was written almost entirely (if not entirely) during summer term, a period when I am employed by Mason only a part-time.

Thanks for any additional guidance that you can provide.

All the best,

Ed

Edward Maibach, MPH, PhD
University Professor, Department of Communication
Director, Center for Climate Change Communication
George Mason University, MS 6A8
Fairfax, VA 22030
www.climatechangecommunication.org

From: Elizabeth I Woodley
Sent: Tuesday, September 29, 2015 2:27 PM
To: Jagadish Shukla; Paul A Dirmeyer; Edward W Maibach; Barry A Klinger; Paul S Schopf; David M. Straus
Cc: Edwin K Schneider
Subject: FOIA Request for E-mails

Good afternoon Professors Shukla, Dirmeyer, Maibach, Klinger, Schopf, and Straus,

My name is Elizabeth Woodley. I am George Mason University's Freedom of Information Act Compliance Officer. I wanted to let you know that I have received a FOIA request for e-mail communications which you may have sent or received from your Mason e-mail address in your capacity as Mason employees from June 1, 2015 to the present which include the keywords "RICO, racketeer, racketeering, DoJ, prosecute, or prosecution".

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If you believe you may possess responsive documents, please let me know and send me an estimate of the cost to produce the documents. Please estimate the amount of time you (or another Mason employee as your designee) would spend responding to this request (searching for documents and reviewing them for possible exemptions). Please also tell me your (or your designee's) hourly rate, so that I may charge the requester for your time. Hourly rate is calculated by dividing base salary (without benefits) by 2080 for 12-month employees or 1560 for 9-month employees.

Please do not begin responding to the request until you hear from me. If the cost estimate is high enough I will require the requester to pay a deposit before we begin the response.

Please let me know if you have any questions about this request. I am available by e-mail or phone- my direct line is 703-993-5115. For more information, Mason's FOIA Policy is available here:

http://universitypolicy.gmu.edu/policies/responding-to-virginia-freedom-of-information-act-foia-requests-for-records/?_ga=1.13439028.201496376.1363277436

Thank you,

Elizabeth

Elizabeth Woodley, J.D.
FOIA Compliance Officer
George Mason University
Compliance, Diversity, and Ethics
Phone: (703) 993-5115

Elizabeth I Woodley

From: Elizabeth I Woodley
Sent: Tuesday, September 29, 2015 4:02 PM
To: Edward W Maibach
Subject: RE: Second FOIA Request
Attachments: GMU Shukla Consulting Conflicts Records Request.pdf; GMU Shukla et al RICO Records Request.pdf

Hi Ed,

Thank you for this information. Would your COI certifications be with ORIA, do you know?

The requester seems to be claiming that you and certain other members of Mason's faculty may have violated Conflict of Interest laws and policies. I have attached the two requests that I have received from this requester.

The University is required to respond to any FOIA request by a Virginia citizen, whatever the reason for the request. If you would like to FOIA my communications with the requester, you may do so (assuming you are a Virginia citizen, or you may have a Virginia citizen do so).

Thanks again,

Elizabeth

From: Edward W Maibach
Sent: Tuesday, September 29, 2015 3:36 PM
To: Elizabeth I Woodley
Subject: Re: Second FOIA Request

Hi Elizabeth,

This is a curious set of requests. Here are my initial reactions:

"1) applications for and "written authorization" of waiver of conflicts of interest, and/ or from the prohibition on outside employment and paid consulting exceeding the equivalent of one day per work week without written authorization;

I have never applied for such an exception, because I do relatively little paid consulting.

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Other than my laptop, which is owned by Mason, I can't think of anything else involving Mason that I would have used in my consulting.

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None of us have any SFI's related to any institutional responsibilities.

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I am required to file a COI certification every time I get a grant. In no instance did I ever claim a conflict of interest, because I have none.

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Edward Maibach, MPH, PhD
 University Professor, Department of Communication
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Sent: Tuesday, September 29, 2015 3:17 PM
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Elizabeth

Elizabeth Woodley, J.D.
FOIA Compliance Officer
George Mason University
Compliance, Diversity, and Ethics
Phone: (703) 993-5115



Request under the Virginia Freedom of Information Act

September 29, 2015

Elizabeth Woodley
FOIA Compliance Officer
George Mason University

BY ELECTRONIC MAIL — ewoodley@gmu.edu

Re: Public Records Request – Certain Records Pertaining to GMU Faculty Jagadish Shukla, Paul Dirmeyer, Ed Maibach, James Kinter

Dear Ms. Woodley,

With the Competitive Enterprise Institute (CEI) and as a resident of Albemarle County, Virginia, pursuant to the Virginia Freedom of Information Act, Virginia Code § 2.2-3700 *et seq.*, I request you please provide us within five working days copies of all documents in the University's possession as described below.

We make this request following up several reports that George Mason University faculty member Prof. Jagadish Shukla is paying himself, through a largely taxpayer-funded non-governmental organization, nearly three hundred thousand dollars per year (\$292,688)¹ for part-time work that is apparently quite similar to his work as GMU Professor and Director of its Climate Dynamics Program,² for which he is paid between a quarter and a third of a million dollars per year (reportedly leaping from \$250,866 in 2013 to \$314,000 in 2014).³

¹ "Research in the Areas of Climate Variability, Climate Predictability and Climate Changes." <http://www.guidestar.org/FinDocuments/2014/521/761/2014-521761388-0b7d49e1-9.pdf>. With his spouse both compensations from this organization come to \$438,733. According to at least one published source, two Shukla daughters also appeared on the group's payroll. See Tony Thomas, "The Warmists' Golden Fleece", Quadrant, September 27, 2015, <http://quadrant.org.au/opinion/qed/2015/09/warmists-golden-fleece/>.

² <https://cos.gmu.edu/aoes/profile-jagadish-shukla/>.

³ Stephen McIntyre, "Shukla's Gold", Climate Audit, September 28, 2015, <http://climateaudit.org/2015/09/28/shuklas-gold/>.

Apparently similar situations exist for other GMU faculty involved in an effort organized by Prof. Shukla — through Shukla’s group if all in their capacities as GMU faculty. Together these faculty urge the Department of Justice to initiate criminal investigation, under the Federal Racketeer Influenced and Corrupt Organizations Act (RICO), of parties who disagree over the subject of their related and highly lucrative full- and part-time work: Paul Dirmeyer’s (\$112,500 GMU salary in 2013) CV reflects an affiliation with the Center for Ocean-Land-Atmosphere Studies (COLA), which seems to be an entity of Prof. Shukla’s foundation⁴; George Mason communications professor Ed Maibach (\$171,912) is also director of its Center for Climate Change Communication.

“In addition, Shukla’s long-time associate, James Kinter” — who did not sign the letter seeking RICO investigation — “participated in the same double dip, though on a less grandiose scale. Kinter, also a Professor at George Mason, doubled his 2014 university salary of \$180,038 with \$171,320 from IGES, for a total 2014 income of \$351,358.”⁵

We note the following in affirming the strong public interest in the requested records:

“The University looks favorably on appropriate consulting work by faculty members insofar as it does not interfere with full, proper, and effective performance of faculty duties and responsibilities. **Outside employment and paid consulting cannot exceed the equivalent of one day per work week without written authorization** from the collegiate dean or institute director. **Faculty may be required to document outside employment to insure compliance with these requirements.** Although faculty members are state employees, they consult as private individuals, and the University is not responsible for their work outside the University. **When consulting, faculty members should take care to preserve the distinction between projects undertaken through individual initiatives and projects sponsored or officially sanctioned by the University. Outside business interests must not violate the Commonwealth’s conflict of interest laws** [<https://vacode.org/2.2-3100/> <https://vacode.org/23-38.96/>] ... **or the University’s two conflict of interest policies: 4001, Financial Conflicts of Interests in University Contracts with Businesses under Virginia Law at <http://universitypolicy.gmu.edu/policies/financial-conflicts-of-interest-in-university-contracts-with-businesses-under-virginia-law/> and 4010, Financial Conflicts of Interest in Federally Funded Research at <http://universitypolicy.gmu.edu/policies/financial-conflicts-of-interest-in-federally-funded-research/>.**

⁴ Shukla runs the Institute for Global Environment and Society (IGES). Thomas, “The Warmists’ Golden Fleece”, Quadrant, September 27, 2015, “Research scientists at COLA pick up pay of around \$US125,000-130,000, according to the foundation’s tax filings.”

⁵ Stephen McIntyre, “Shukla’s Gold”.

Faculty members may use university facilities, equipment, supplies or computer time in their consulting only after obtaining the approval of the collegiate dean or institute director.”

George Mason University Faculty Handbook - July 1, 2014, 2.10.7 Outside Employment and/or Business Interests, pp. 49-50 of 62 (bold added).

Also:

General Prohibitions Virginia Code §2.2-3103.

These prohibitions do not require a personal interest, and there are no exceptions.

You are prohibited from accepting or soliciting money or anything of value, regardless of the amount, for:

- 1) Performing your official duties (salary and remuneration for actual expenses excepted)...
- 3) Obtaining a contract for any person or business...
- 5) Accepting any money, loan, gift favor, service or business or professional opportunity reasonably tending to influence you in the performance of your duties.

We also note GMU’s Conflict of Interest Act Quick Guide:

COIA QUICK GUIDE

The State and Local Government Conflict of Interests Act (“Act”), Virginia Code §2.2-3100, et seq., is applicable to you as a University employee. The Act governs 1) contracts 2) transactions and 3) general prohibitions. The following is intended as general guidance. *You need to be aware of potential conflicts and seek an exception, applicable to contracts and transactions only, before engaging in any prohibited conduct....*

Statement of Economic Interests Virginia Code §2.2-3117.

Some employees are required to annually file a Statement of Economic Interests with the Secretary of the Commonwealth. This is a public document. While the form is not a model of clarity, the general guidance is that when in doubt, disclose.

WARNING: The Act has criminal and civil sanctions. Virginia Code §2.2-3120, et seq.

(italics added, bold in original) <http://hr.gmu.edu/policy/docs/COIAQuickGuide.pdf>

Finally, we note that, at 28 hours of work per week, Prof. Shukla's part-time work is approximately four times that which GMU's Handbook indicates is permitted ("the equivalent of one day per work week without written authorization"). This is according to his outside employer's IRS filings as posted at <http://www.guidestar.org/FinDocuments/2014/521/761/2014-521761388-0b7d49e1-9.pdf>.

As such, please provide us copies of each of the following, for Profs. Shukla, Dirmeyer, Maibach and Kinter for 2011, 2012, 2013, 2014 and 2015, in GMU's possession:

- 1) Statements of Economic Interests, if you possess one or more copies of this public record originally filed with the Secretary of the Commonwealth (given that "Each federally funded investigator is responsible for accurate disclosure of financial conflicts of interest. Deans and Institute Directors are responsible for ensuring management plans are appropriate and implemented as specified");
- 2) applications for and "written authorization" of waiver of conflicts of interest, and/or from the prohibition on outside employment and paid consulting exceeding the equivalent of one day per work week without written authorization;
- 3) approvals of the appropriate collegiate dean or institute director for Profs. Shukla, Dirmeyer, Maibach and Kinter to use university facilities, equipment, supplies or computer time in their consulting;
- 4) list of known SFIs (and those of his spouse and/or dependent children) related to the investigator's institutional responsibilities;
- 5) conflict of interest certifications; and
- 6) conflict of interest management plans.

We ask that you please provide responsive documents in electronic format, and in complete form, with any appendices or attachments as the case may be. We do not seek duplicates of responsive records.

As you are aware, Va. Code § 2.2-3704 (B) requires your office to provide a response within five days. Such a response can take several forms:

- 1) Pursuant to § 2.2-3704 (B)(1), you can withhold all responsive records, but only if you "identify with reasonable particularity the volume and subject matter of withheld records, and cite, as to each category of withheld records, the specific Code section that authorizes the withholding of the records."
- 2) Pursuant to § 2.2-3704 (B)(2), you can provide the records in part and withhold them in part, but only if you "identify with reasonable particularity the subject matter of withheld portions, and cite, as to each category of withheld records, the specific Code section that authorizes the withholding of the records."
- 3) Pursuant to Va. Code § 2.2-3704(B)(3), you can claim that no records exist.
- 4) Pursuant to Va. Code 2.2-3704(B)(4), you can claim an extra seven days are needed to make one of the responses delineated in ##1-3, above.

Va. Code 2.2-3704(F) allows a public body to “make reasonable charges not to exceed its actual cost incurred in accessing, duplicating, supplying, or searching for the requested records.” The statute does not allow a public body to charge for a mere determination that records are exempt and therefore withheld pursuant to Va. Code § 2.2-3704 (B)(1), in which case the public body must nevertheless identify the volume of the records it is withholding and the statutory basis for doing so. Similarly, the University may claim it has no responsive records pursuant to § 2.2-3704 (B)(3). It may not, however, charge for such a response.

Requesters’ specific purpose makes release and waiver of any costs in the public interest, in that the principal purpose of the request is to access and disseminate information to the general public and is not for the principal purpose of personal or commercial benefit. Neither requester has any commercial interest in obtaining the requested information. Instead, we intend to use the requested information to inform the public, so the public can meaningfully oversee the use of public resources.

Regardless, I authorize charges of up to \$250.00 in advance. Please do not hesitate to contact me with any questions.

Sincerely,



Christopher C. Horner, Esq.

Competitive Enterprise Institute
1899 L Street NW, Suite 1200
Washington, DC 20036
202.262.4458 (M)

1489 Kinross Lane
Keswick, VA 22947
CHornerLaw@aol.com



Request under the Virginia Freedom of Information Act

September 24, 2015

Elizabeth Woodley, J.D.
FOIA Compliance Officer
George Mason University
Compliance, Diversity, and Ethics

BY ELECTRONIC MAIL — ewoodley@gmu.edu

Re: Public Records Request – Certain Emails to or from Profs. Shukla, Maibach, Dirmeyer, Klinger, Schopf, and Straus

Dear Ms. Woodley,

With the Competitive Enterprise Institute (CEI) and as a resident of Albemarle County, Virginia, pursuant to the Virginia Freedom of Information Act, Virginia Code § 2.2-3700 *et seq.* (VFOIA), I request you please provide us within five working days copies of all documents in your possession as described below.

We make this request together following up a [September 1, 2015 letter](#) recently in the news, sent by among others six George Mason University faculty members. In it, Profs. Jagdish Shukla, Edward Maibach, Paul Dirmeyer, Barry Klinger, Paul Schopf, and David Straus write the United States Department of Justice, expressly in their capacities as professors with your public institution dedicated to the vigorous exchange of ideas, to “strongly endorse” criminal investigation of those who disagree with them.

Specifically, these GMU faculty members write in support of investigation of parties identified in some of their favorite books and pamphlets for not sharing the same vision of “America’s response to climate change”, using the Federal Racketeer Influenced and Corrupt Organizations Act (RICO).

While we credit the faculty’s understatement in characterizing this suggestion as an “aggressive and imaginative use of limited tools available to” the federal government in

countering political opposition, we are interested in the use of public resources afforded them to advance this unique twist on vigorous policy debate.

As such, please provide us copies of all records in the University's system in the form of electronic mail sent From or To the above-named GMU faculty (including also in the cc: or bcc: fields) dated from June 1, 2015 through the date you process this request, inclusive, which use of contain any of the words RICO, racketeer, racketeering, DoJ, prosecute or prosecution.

We understand that open records laws may seem a rather less "aggressive or imaginative use of limited tools available" to the public than those conjured by Profs. Shukla, Maibach, Dirmeyer, Klinger, Schopf, and Straus and their cadre. However, as both requesters are engaged in research, investigative journalism and publication, as well as transparency pursuits seeking public records relating to environmental and energy policy, we share an approach of giving preference to increasing — as opposed to suppressing — the information available to the public, particularly regarding the use of public resources.

We ask that you please provide responsive documents in electronic format, and in complete form, with any appendices or attachments as the case may be. We do not seek duplicates of responsive records.

As you are aware, Va. Code § 2.2-3704 (B) requires your office to provide a response within five days. Such a response can take several forms:

- 1) Pursuant to § 2.2-3704 (B)(1), you can withhold all responsive records, but only if you "identify with reasonable particularity the volume and subject matter of withheld records, and cite, as to each category of withheld records, the specific Code section that authorizes the withholding of the records."
- 2) Pursuant to § 2.2-3704 (B)(2), you can provide the records in part and withhold them in part, but only if you "identify with reasonable particularity the subject matter of withheld portions, and cite, as to each category of withheld records, the specific Code section that authorizes the withholding of the records."
- 3) Pursuant to Va. Code § 2.2-3704(B)(3), you can claim that no records exist.
- 4) Pursuant to Va. Code 2.2-3704(B)(4), you can claim an extra seven days are needed to make one of the responses delineated in ##1-3, above.

Va. Code 2.2-3704(F) allows a public body to "make reasonable charges not to exceed its actual cost incurred in accessing, duplicating, supplying, or searching for the requested records." The statute does not allow a public body to charge for a mere determination that records are exempt and therefore withheld pursuant to Va. Code § 2.2-3704 (B)(1), in which case the public body must nevertheless identify the volume of the records it is withholding and the statutory basis for doing so. Similarly, the University may claim it

has no responsive records pursuant to § 2.2-3704 (B)(3). It may not, however, charge for such a response.

Requesters' specific purpose makes release and waiver of any costs in the public interest, in that the principal purpose of the request is to access and disseminate information to the general public and is not for the principal purpose of personal or commercial benefit. Neither requester has any commercial interest in obtaining the requested information. Instead, we intend to use the requested information to inform the public, so the public can meaningfully oversee the use of public resources.

Regardless, I authorize charges of up to \$100.00 in advance. Please do not hesitate to contact me with any questions.

Sincerely,



Christopher C. Horner, Esq.

Competitive Enterprise Institute
1899 L Street NW, Suite 1200
Washington, DC 20036
202.262.4458 (M)

1489 Kinross Lane
Keswick, VA 22947
CHornerLaw@aol.com

Elizabeth I Woodley

From: Elizabeth I Woodley
Sent: Tuesday, September 29, 2015 4:12 PM
To: Edward W Maibach; Jagadish Shukla; Paul A Dirmeyer; Barry A Klinger; Paul S Schopf; David M. Straus
Cc: Edwin K Schneider
Subject: RE: FOIA Request for E-mails

Hi Ed,

To answer your questions:

1. Either printed documents or PDFs, whichever is easier for you.
2. The purpose of the FOIA statute is to promote transparency in government operations- it's an "open government" law. Therefore, it's written to broadly capture the activities of government, including public universities, while protecting limited categories of sensitive information. You are correct that the public records that you would be in possession of relate to teaching, research or service. If you can't locate any public records (related to your teaching, research or service) which contain the keywords the requester has asked for, then I will respond to the requester that no public records exist which are responsive to his request. But, the reason the requester is asking for documents is irrelevant under the FOIA statute- the purpose of the statute is to allow people to search for government misconduct, after all. We have to provide records to people who are hostile to the University or our faculty in the same way as we provide documents to people who support the University.

Hope that helps clarify. Let me know if you have more questions!

Elizabeth

From: Edward W Maibach
Sent: Tuesday, September 29, 2015 4:01 PM
To: Elizabeth I Woodley; Jagadish Shukla; Paul A Dirmeyer; Barry A Klinger; Paul S Schopf; David M. Straus
Cc: Edwin K Schneider
Subject: Re: FOIA Request for E-mails

Hi Elizabeth,

Two questions of clarification, the easy one first:

- 1) How would you like us to share these emails with you? Printed documents?
- 2) The exemptions criteria seems quite narrow (private information, personnel records, student information, and proprietary information) but the "in the course of public business" criteria seems quite broad. How should we reconcile the difference?

In my view, I was not paid by Mason to create the document (a letter) that is of interest to the requester, nor does the document directly relate to my job description in that it is neither teaching, research nor service -- activities which consume far more than 40 hours of my time each week during the school year. Rather, it was

written in my capacity as a concerned citizen, in my spare time. Moreover, it was written almost entirely (if not entirely) during summer term, a period when I am employed by Mason only a part-time.

Thanks for any additional guidance that you can provide.

All the best,

Ed

Edward Maibach, MPH, PhD
 University Professor, Department of Communication
 Director, Center for Climate Change Communication
 George Mason University, MS 6A8
 Fairfax, VA 22030
www.climatechangecommunication.org

From: Elizabeth I Woodley
Sent: Tuesday, September 29, 2015 2:27 PM
To: Jagadish Shukla; Paul A Dirmeyer; Edward W Maibach; Barry A Klinger; Paul S Schopf; David M. Straus
Cc: Edwin K Schneider
Subject: FOIA Request for E-mails

Good afternoon Professors Shukla, Dirmeyer, Maibach, Klinger, Schopf, and Straus,

My name is Elizabeth Woodley. I am George Mason University's Freedom of Information Act Compliance Officer. I wanted to let you know that I have received a FOIA request for e-mail communications which you may have sent or received from your Mason e-mail address in your capacity as Mason employees from June 1, 2015 to the present which include the keywords "RICO, racketeer, racketeering, DOJ, prosecute, or prosecution".

The FOIA statute covers records which were created "in the course of public business", in your capacity as Mason employees. Good questions to ask yourself to help determine whether a record was created in the transaction of public business are: "Was I paid by George Mason to create this document?" and "Does the document relate to the duties listed in my job description?"

Outside of some narrowly-defined exemptions, all public records are subject to FOIA. Exemptions include: private information, personnel records, student information, and proprietary information.

If you believe you may possess responsive documents, please let me know and send me an estimate of the cost to produce the documents. Please estimate the amount of time you (or another Mason employee as your designee) would spend responding to this request (searching for documents and reviewing them for possible exemptions). Please also tell me your (or your designee's) hourly rate, so that I may charge the requester for your time. Hourly rate is calculated by dividing base salary (without benefits) by 2080 for 12-month employees or 1560 for 9-month employees.

Please do not begin responding to the request until you hear from me. If the cost estimate is high enough I will require the requester to pay a deposit before we begin the response.

Please let me know if you have any questions about this request. I am available by e-mail or phone- my direct line is 703-993-5115. For more information, Mason's FOIA Policy is available here:

http://universitypolicy.gmu.edu/policies/responding-to-virginia-freedom-of-information-act-foia-requests-for-records/?_ga=1.13439028.201496376.1363277436

Thank you,

Elizabeth

Elizabeth Woodley, J.D.
FOIA Compliance Officer
George Mason University
Compliance, Diversity, and Ethics
Phone: (703) 993-5115

Elizabeth I Woodley

From: Edward W Maibach
Sent: Tuesday, September 29, 2015 4:13 PM
To: Elizabeth I Woodley
Subject: Re: Second FOIA Request

ORIA sounds right to me. It is all done online, initiated by OSP in response to our submission of a grant proposal.

Edward Maibach, MPH, PhD
University Professor, Department of Communication
Director, Center for Climate Change Communication
George Mason University, MS 6A8
Fairfax, VA 22030
www.climatechangecommunication.org

From: Elizabeth I Woodley
Sent: Tuesday, September 29, 2015 4:01 PM
To: Edward W Maibach
Subject: RE: Second FOIA Request

Hi Ed,

Thank you for this information. Would your COI certifications be with ORIA, do you know?

The requester seems to be claiming that you and certain other members of Mason's faculty may have violated Conflict of Interest laws and policies. I have attached the two requests that I have received from this requester.

The University is required to respond to any FOIA request by a Virginia citizen, whatever the reason for the request. If you would like to FOIA my communications with the requester, you may do so (assuming you are a Virginia citizen, or you may have a Virginia citizen do so).

Thanks again,

Elizabeth

From: Edward W Maibach
Sent: Tuesday, September 29, 2015 3:36 PM
To: Elizabeth I Woodley
Subject: Re: Second FOIA Request

Hi Elizabeth,

This is a curious set of requests. Here are my initial reactions:

"1) applications for and "written authorization" of waiver of conflicts of interest, and/

or from the prohibition on outside employment and paid consulting exceeding the equivalent of one day per work week without written authorization;

I have never applied for such an exception, because I do relatively little paid consulting.

2) approvals of the appropriate collegiate dean or institute director for Prof. Maibach to use university facilities, equipment, supplies or computer time in their consulting;

Other than my laptop, which is owned by Mason, I can't think of anything else involving Mason that I would have used in my consulting.

3) list of known SFIs (and those of his spouse and/or dependent children) related to the investigator's institutional responsibilities;

None of us have any SFI's related to my institutional responsibilities.

4) conflict of interest certifications; and

I am required to file a COI certification every time I get a grant. In no instance did I ever claim a conflict of interest, because I have none.

5) conflict of interest management plans."

Not applicable to me.

Is this sufficient?

Any idea what they are fishing for with this request?

All the best,

Ed

p.s. I suppose it is obvious, but the people who are filing these requests have every intention of trying to hurt Shukla and me. We've been told that quite directly by people indirectly involved in the action.

Edward Maibach, MPH, PhD
University Professor, Department of Communication
Director, Center for Climate Change Communication
George Mason University, MS 6A8
Fairfax, VA 22030
www.climatechangecommunication.org



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Read more...

From: Elizabeth I Woodley
Sent: Tuesday, September 29, 2015 3:17 PM
To: Edward W Maibach
Subject: Second FOIA Request

Good afternoon Professor Maibach,

As I told you in the e-mail I just sent, I am Mason's FOIA Compliance Officer. I have just received a second FOIA request for records, including the following records related to you from the years 2011-2015:

- "1) applications for and "written authorization" of waiver of conflicts of interest, and/or from the prohibition on outside employment and paid consulting exceeding the equivalent of one day per work week without written authorization;
- 2) approvals of the appropriate collegiate dean or institute director for Prof. Maibach to use university facilities, equipment, supplies or computer time in their consulting;
- 3) list of known SFIs (and those of his spouse and/or dependent children) related to the investigator's institutional responsibilities;
- 4) conflict of interest certifications; and
- 5) conflict of interest management plans."

Do you know if any such records exist and, if so, who has custody of them? If I locate any responsive records, I will send them to you before I send out the FOIA response so that you may review them for exemptions (private information, etc.). The University must respond to this second request by October 6th, or we may extend the deadline to October 15th.

Again, thank you for your help and please let me know if you have questions.

Elizabeth

Elizabeth Woodley, J.D.
FOIA Compliance Officer
George Mason University
Compliance, Diversity, and Ethics
Phone: (703) 993-5115

Elizabeth I Woodley

From: Elizabeth I Woodley
Sent: Wednesday, September 30, 2015 8:50 AM
To: Jagadish Shukla
Cc: Paul A Dirmeyer; Edward W Maibach; Barry A Klinger; Paul S Schopf; David M. Straus; Edwin K Schneider
Subject: RE: FOIA Request for E-mails
Attachments: GMU Shukla et al RICO Records Request.pdf; GMU Shukla Consulting Conflicts Records Request.pdf

Good morning Professor Shukla,

Please find the attached request. Yesterday I received a second request (also attached); I am working to locate those documents. Any documents that I produce I will first send to the employee mentioned in them so that he may review them for private information which may be exempt from FOIA.

Thank you,

Elizabeth

Elizabeth Woodley, J.D.
FOIA Compliance Officer
George Mason University
Compliance, Diversity, and Ethics
Phone: (703) 993-5115

From: Jagadish Shukla
Sent: Tuesday, September 29, 2015 10:53 PM
To: Elizabeth I Woodley
Cc: Paul A Dirmeyer; Edward W Maibach; Barry A Klinger; Paul S Schopf; David M. Straus; Edwin K Schneider
Subject: Re: FOIA Request for E-mails

Dear Elizabeth,
I just saw your email.
Could you please forward the original request? Thank you.

Regards,
Shukla

University Professor, George Mason University
President, Institute of Global Environment & Society
Research Hall, Room 105
George Mason University, MSN: 2B3
4400 University Drive
Fairfax, VA 22030 USA

Tel: 703-993-5700
E-mail: shukla@iges.org

On Sep 29, 2015, at 2:27 PM, Elizabeth I Woodley <ewoodley@gmu.edu> wrote:

Good afternoon Professors Shukla, Dirmeyer, Maibach, Klinger, Schopf, and Straus,

My name is Elizabeth Woodley. I am George Mason University's Freedom of Information Act Compliance Officer. I wanted to let you know that I have received a FOIA request for e-mail communications which you may have sent or received from your Mason e-mail address in your capacity as Mason employees from June 1, 2015 to the present which include the keywords "RICO, racketeer, racketeering, DoJ, prosecute, or prosecution".

The FOIA statute covers records which were created "in the course of public business", in your capacity as Mason employees. Good questions to ask yourself to help determine whether a record was created in the transaction of public business are: "Was I paid by George Mason to create this document?" and "Does the document relate to the duties listed in my job description?"

Outside of some narrowly-defined exemptions, all public records are subject to FOIA. Exemptions include: private information, personnel records, student information, and proprietary information.

If you believe you may possess responsive documents, please let me know and send me an estimate of the cost to produce the documents. Please estimate the amount of time you (or another Mason employee as your designee) would spend responding to this request (searching for documents and reviewing them for possible exemptions). Please also tell me your (or your designee's) hourly rate, so that I may charge the requester for your time. Hourly rate is calculated by dividing base salary (without benefits) by 2080 for 12-month employees or 1560 for 9-month employees.

Please do not begin responding to the request until you hear from me. If the cost estimate is high enough I will require the requester to pay a deposit before we begin the response.

Please let me know if you have any questions about this request. I am available by e-mail or phone- my direct line is 703-993-5115. For more information, Mason's FOIA Policy is available here: http://universitypolicy.gmu.edu/policies/responding-to-virginia-freedom-of-information-act-foia-requests-for-records/?_ga=1.13439028.201496376.1363277436

Thank you,

Elizabeth

Elizabeth Woodley, J.D.
FOIA Compliance Officer
George Mason University
Compliance, Diversity, and Ethics
Phone: (703) 993-5115



Request under the Virginia Freedom of Information Act

September 24, 2015

Elizabeth Woodley, J.D.
FOIA Compliance Officer
George Mason University
Compliance, Diversity, and Ethics

BY ELECTRONIC MAIL — ewoodley@gmu.edu

Re: Public Records Request – Certain Emails to or from Profs. Shukla, Maibach, Dirmeyer, Klinger, Schopf, and Straus

Dear Ms. Woodley,

With the Competitive Enterprise Institute (CEI) and as a resident of Albemarle County, Virginia, pursuant to the Virginia Freedom of Information Act, Virginia Code § 2.2-3700 *et seq.* (VFOIA), I request you please provide us within five working days copies of all documents in your possession as described below.

We make this request together following up a September 1, 2015 letter recently in the news, sent by among others six George Mason University faculty members. In it, Profs. Jagadish Shukla, Edward Maibach, Paul Dirmeyer, Barry Klinger, Paul Schopf, and David Straus write the United States Department of Justice, expressly in their capacities as professors with your public institution dedicated to the vigorous exchange of ideas, to “strongly endorse” criminal investigation of those who disagree with them.

Specifically, these GMU faculty members write in support of investigation of parties identified in some of their favorite books and pamphlets for not sharing the same vision of “America’s response to climate change”, using the Federal Racketeer Influenced and Corrupt Organizations Act (RICO).

While we credit the faculty’s understatement in characterizing this suggestion as an “aggressive and imaginative use of limited tools available to” the federal government in

countering political opposition, we are interested in the use of public resources afforded them to advance this unique twist on vigorous policy debate.

As such, please provide us copies of all records in the University's system in the form of electronic mail sent From or To the above-named GMU faculty (including also in the cc: or bcc: fields) dated from June 1, 2015 through the date you process this request, inclusive, which use of contain any of the words RICO, racketeer, racketeering, DoJ, prosecute or prosecution.

We understand that open records laws may seem a rather less "aggressive or imaginative use of limited tools available" to the public than those conjured by Profs. Shukla, Maibach, Dirmeyer, Klinger, Schopf, and Straus and their cadre. However, as both requesters are engaged in research, investigative journalism and publication, as well as transparency pursuits seeking public records relating to environmental and energy policy, we share an approach of giving preference to increasing — as opposed to suppressing — the information available to the public, particularly regarding the use of public resources.

We ask that you please provide responsive documents in electronic format, and in complete form, with any appendices or attachments as the case may be. We do not seek duplicates of responsive records.

As you are aware, Va. Code § 2.2-3704 (B) requires your office to provide a response within five days. Such a response can take several forms:

- 1) Pursuant to § 2.2-3704 (B)(1), you can withhold all responsive records, but only if you "identify with reasonable particularity the volume and subject matter of withheld records, and cite, as to each category of withheld records, the specific Code section that authorizes the withholding of the records."
- 2) Pursuant to § 2.2-3704 (B)(2), you can provide the records in part and withhold them in part, but only if you "identify with reasonable particularity the subject matter of withheld portions, and cite, as to each category of withheld records, the specific Code section that authorizes the withholding of the records."
- 3) Pursuant to Va. Code § 2.2-3704(B)(3), you can claim that no records exist.
- 4) Pursuant to Va. Code 2.2-3704(B)(4), you can claim an extra seven days are needed to make one of the responses delineated in ##1-3, above.

Va. Code 2.2-3704(F) allows a public body to "make reasonable charges not to exceed its actual cost incurred in accessing, duplicating, supplying, or searching for the requested records." The statute does not allow a public body to charge for a mere determination that records are exempt and therefore withheld pursuant to Va. Code § 2.2-3704 (B)(1), in which case the public body must nevertheless identify the volume of the records it is withholding and the statutory basis for doing so. Similarly, the University may claim it

has no responsive records pursuant to § 2.2-3704 (B)(3). It may not, however, charge for such a response.

Requesters' specific purpose makes release and waiver of any costs in the public interest, in that the principal purpose of the request is to access and disseminate information to the general public and is not for the principal purpose of personal or commercial benefit. Neither requester has any commercial interest in obtaining the requested information. Instead, we intend to use the requested information to inform the public, so the public can meaningfully oversee the use of public resources.

Regardless, I authorize charges of up to \$100.00 in advance. Please do not hesitate to contact me with any questions.

Sincerely,



Christopher C. Horner, Esq.

Competitive Enterprise Institute
1899 L Street NW, Suite 1200
Washington, DC 20036
202.262.4458 (M)

1489 Kinross Lane
Keswick, VA 22947
CHornerLaw@aol.com



Request under the Virginia Freedom of Information Act

September 29, 2015

Elizabeth Woodley
FOIA Compliance Officer
George Mason University

BY ELECTRONIC MAIL — ewoodley@gmu.edu

Re: Public Records Request – Certain Records Pertaining to GMU Faculty Jagadish Shukla, Paul Dirmeyer, Ed Maibach, James Kinter

Dear Ms. Woodley,

With the Competitive Enterprise Institute (CEI) and as a resident of Albemarle County, Virginia, pursuant to the Virginia Freedom of Information Act, Virginia Code § 2.2-3700 *et seq.*, I request you please provide us within five working days copies of all documents in the University's possession as described below.

We make this request following up several reports that George Mason University faculty member Prof. Jagadish Shukla is paying himself, through a largely taxpayer-funded non-governmental organization, nearly three hundred thousand dollars per year (\$292,688)¹ for part-time work that is apparently quite similar to his work as GMU Professor and Director of its Climate Dynamics Program,² for which he is paid between a quarter and a third of a million dollars per year (reportedly leaping from \$250,866 in 2013 to \$314,000 in 2014).³

¹ "Research in the Areas of Climate Variability, Climate Predictability and Climate Changes." <http://www.guidestar.org/FinDocuments/2014/521/761/2014-521761388-0b7d49e1-9.pdf>. With his spouse both compensations from this organization come to \$438,733. According to at least one published source, two Shukla daughters also appeared on the group's payroll. See Tony Thomas, "The Warmists' Golden Fleece", Quadrant, September 27, 2015, <http://quadrant.org.au/opinion/qed/2015/09/warmists-golden-fleece/>.

² <https://cos.gmu.edu/aoes/profile-jagadish-shukla/>.

³ Stephen McIntyre, "Shukla's Gold", Climate Audit, September 28, 2015, <http://climateaudit.org/2015/09/28/shuklas-gold/>.

Apparently similar situations exist for other GMU faculty involved in an effort organized by Prof. Shukla — through Shukla’s group if all in their capacities as GMU faculty. Together these faculty urge the Department of Justice to initiate criminal investigation, under the Federal Racketeer Influenced and Corrupt Organizations Act (RICO), of parties who disagree over the subject of their related and highly lucrative full- and part-time work: Paul Dirmeyer’s (\$112,500 GMU salary in 2013) CV reflects an affiliation with the Center for Ocean-Land-Atmosphere Studies (COLA), which seems to be an entity of Prof. Shukla’s foundation⁴; George Mason communications professor Ed Maibach (\$171,912) is also director of its Center for Climate Change Communication.

“In addition, Shukla’s long-time associate, James Kinter” — who did not sign the letter seeking RICO investigation — “participated in the same double dip, though on a less grandiose scale. Kinter, also a Professor at George Mason, doubled his 2014 university salary of \$180,038 with \$171,320 from IGES, for a total 2014 income of \$351,358.”⁵

We note the following in affirming the strong public interest in the requested records:

“The University looks favorably on appropriate consulting work by faculty members insofar as it does not interfere with full, proper, and effective performance of faculty duties and responsibilities. **Outside employment and paid consulting cannot exceed the equivalent of one day per work week without written authorization** from the collegiate dean or institute director. **Faculty may be required to document outside employment to insure compliance with these requirements.** Although faculty members are state employees, they consult as private individuals, and the University is not responsible for their work outside the University. **When consulting, faculty members should take care to preserve the distinction between projects undertaken through individual initiatives and projects sponsored or officially sanctioned by the University. Outside business interests must not violate the Commonwealth's conflict of interest laws** [<https://vacode.org/2.2-3100/> <https://vacode.org/23-38.96/>] ... **or the University's two conflict of interest policies: 4001, Financial Conflicts of Interests in University Contracts with Businesses under Virginia Law at <http://universitypolicy.gmu.edu/policies/financial-conflicts-of-interest-in-university-contracts-with-businesses-under-virginia-law/> and 4010, Financial Conflicts of Interest in Federally Funded Research at <http://universitypolicy.gmu.edu/policies/financial-conflicts-of-interest-in-federally-funded-research/>.**

⁴ Shukla runs the Institute for Global Environment and Society (IGES). Thomas, “The Warmists’ Golden Fleece”, Quadrant, September 27, 2015, “Research scientists at COLA pick up pay of around \$US125,000-130,000, according to the foundation’s tax filings.”

⁵ Stephen McIntyre, “Shukla’s Gold”.

Faculty members may use university facilities, equipment, supplies or computer time in their consulting only after obtaining the approval of the collegiate dean or institute director.”

George Mason University Faculty Handbook - July 1, 2014, 2.10.7 Outside Employment and/or Business Interests, pp. 49-50 of 62 (bold added).

Also:

General Prohibitions Virginia Code §2.2-3103.

These prohibitions do not require a personal interest, and there are no exceptions.

You are prohibited from accepting or soliciting money or anything of value, regardless of the amount, for:

- 1) Performing your official duties (salary and remuneration for actual expenses excepted)...
- 3) Obtaining a contract for any person or business...
- 5) Accepting any money, loan, gift favor, service or business or professional opportunity reasonably tending to influence you in the performance of your duties.

We also note GMU’s Conflict of Interest Act Quick Guide:

COIA QUICK GUIDE

The State and Local Government Conflict of Interests Act (“Act”), Virginia Code §2.2-3100, et seq., is applicable to you as a University employee. The Act governs 1) contracts 2) transactions and 3) general prohibitions. The following is intended as general guidance. *You need to be aware of potential conflicts and seek an exception, applicable to contracts and transactions only, before engaging in any prohibited conduct....*

Statement of Economic Interests Virginia Code §2.2-3117.

Some employees are required to annually file a Statement of Economic Interests with the Secretary of the Commonwealth. This is a public document. While the form is not a model of clarity, the general guidance is that when in doubt, disclose.

WARNING: The Act has criminal and civil sanctions. Virginia Code §2.2-3120, et seq.

(italics added, bold in original) <http://hr.gmu.edu/policy/docs/COIAQuickGuide.pdf>

Finally, we note that, at 28 hours of work per week, Prof. Shukla's part-time work is approximately four times that which GMU's Handbook indicates is permitted ("the equivalent of one day per work week without written authorization"). This is according to his outside employer's IRS filings as posted at <http://www.guidestar.org/FinDocuments/2014/521/761/2014-521761388-0b7d49e1-9.pdf>.

As such, please provide us copies of each of the following, for Profs. Shukla, Dirmeyer, Maibach and Kinter for 2011, 2012, 2013, 2014 and 2015, in GMU's possession:

- 1) Statements of Economic Interests, if you possess one or more copies of this public record originally filed with the Secretary of the Commonwealth (given that "Each federally funded investigator is responsible for accurate disclosure of financial conflicts of interest. Deans and Institute Directors are responsible for ensuring management plans are appropriate and implemented as specified");
- 2) applications for and "written authorization" of waiver of conflicts of interest, and/or from the prohibition on outside employment and paid consulting exceeding the equivalent of one day per work week without written authorization;
- 3) approvals of the appropriate collegiate dean or institute director for Profs. Shukla, Dirmeyer, Maibach and Kinter to use university facilities, equipment, supplies or computer time in their consulting;
- 4) list of known SFIs (and those of his spouse and/or dependent children) related to the investigator's institutional responsibilities;
- 5) conflict of interest certifications; and
- 6) conflict of interest management plans.

We ask that you please provide responsive documents in electronic format, and in complete form, with any appendices or attachments as the case may be. We do not seek duplicates of responsive records.

As you are aware, Va. Code § 2.2-3704 (B) requires your office to provide a response within five days. Such a response can take several forms:

- 1) Pursuant to § 2.2-3704 (B)(1), you can withhold all responsive records, but only if you "identify with reasonable particularity the volume and subject matter of withheld records, and cite, as to each category of withheld records, the specific Code section that authorizes the withholding of the records."
- 2) Pursuant to § 2.2-3704 (B)(2), you can provide the records in part and withhold them in part, but only if you "identify with reasonable particularity the subject matter of withheld portions, and cite, as to each category of withheld records, the specific Code section that authorizes the withholding of the records."
- 3) Pursuant to Va. Code § 2.2-3704(B)(3), you can claim that no records exist.
- 4) Pursuant to Va. Code 2.2-3704(B)(4), you can claim an extra seven days are needed to make one of the responses delineated in ##1-3, above.

Va. Code 2.2-3704(F) allows a public body to “make reasonable charges not to exceed its actual cost incurred in accessing, duplicating, supplying, or searching for the requested records.” The statute does not allow a public body to charge for a mere determination that records are exempt and therefore withheld pursuant to Va. Code § 2.2-3704 (B)(1), in which case the public body must nevertheless identify the volume of the records it is withholding and the statutory basis for doing so. Similarly, the University may claim it has no responsive records pursuant to § 2.2-3704 (B)(3). It may not, however, charge for such a response.

Requesters’ specific purpose makes release and waiver of any costs in the public interest, in that the principal purpose of the request is to access and disseminate information to the general public and is not for the principal purpose of personal or commercial benefit. Neither requester has any commercial interest in obtaining the requested information. Instead, we intend to use the requested information to inform the public, so the public can meaningfully oversee the use of public resources.

Regardless, I authorize charges of up to \$250.00 in advance. Please do not hesitate to contact me with any questions.

Sincerely,



Christopher C. Horner, Esq.

Competitive Enterprise Institute
1899 L Street NW, Suite 1200
Washington, DC 20036
202.262.4458 (M)

1489 Kinross Lane
Keswick, VA 22947
CHornerLaw@aol.com

Elizabeth I Woodley

From: Edward W Maibach
Sent: Wednesday, September 30, 2015 3:02 PM
To: Elizabeth I Woodley
Subject: Re: FOIA Request for E-mails

Follow Up Flag: Follow up
Flag Status: Completed

I estimate that it will take me 4 hours to comply, at a rate of \$86.50 per hour.

Edward Maibach, MPH, PhD
University Professor, Department of Communication
Director, Center for Climate Change Communication
George Mason University, MS 6A8
Fairfax, VA 22030
www.climatechangecommunication.org

From: Elizabeth I Woodley
Sent: Tuesday, September 29, 2015 2:27 PM
To: Jagadish Shukla; Paul A Dirmeyer; Edward W Maibach; Barry A Klinger; Paul S Schopf; David M. Straus
Cc: Edwin K Schneider
Subject: FOIA Request for E-mails

Good afternoon Professors Shukla, Dirmeyer, Maibach, Klinger, Schopf, and Straus,

My name is Elizabeth Woodley. I am George Mason University's Freedom of Information Act Compliance Officer. I wanted to let you know that I have received a FOIA request for e-mail communications which you may have sent or received from your Mason e-mail address in your capacity as Mason employees from June 1, 2015 to the present which include the keywords "RICO, racketeer, racketeering, DOJ, prosecute, or prosecution".

The FOIA statute covers records which were created "in the course of public business", in your capacity as Mason employees. Good questions to ask yourself to help determine whether a record was created in the transaction of public business are: "Was I paid by George Mason to create this document?" and "Does the document relate to the duties listed in my job description?"

Outside of some narrowly-defined exemptions, all public records are subject to FOIA. Exemptions include: private information, personnel records, student information, and proprietary information.

If you believe you may possess responsive documents, please let me know and send me an estimate of the cost to produce the documents. Please estimate the amount of time you (or another Mason employee as your designee) would spend responding to this request (searching for documents and reviewing them for possible exemptions). Please also tell me your (or your designee's) hourly rate, so that I may charge the requester for your time. Hourly rate is calculated by dividing base salary (without benefits) by 2080 for 12-month employees or 1560 for 9-month employees.

Please do not begin responding to the request until you hear from me. If the cost estimate is high enough I will require the requester to pay a deposit before we begin the response.

000170

Please let me know if you have any questions about this request. I am available via e-mail or phone- my direct line is 703-993-5115. For more information, Mason's FOIA Policy is available here:

http://universitypolicy.gmu.edu/policies/responding-to-virginia-freedom-of-information-act-foia-requests-for-records/?_ga=1.13439028.201496376.1363277436

Thank you,

Elizabeth

Elizabeth Woodley, J.D.
FOIA Compliance Officer
George Mason University
Compliance, Diversity, and Ethics
Phone: (703) 993-5115

Elizabeth I Woodley

From: Elizabeth I Woodley
Sent: Monday, October 05, 2015 10:42 AM
To: Jagadish Shukla; Paul A Dirmeyer; Edward W Maibach; Barry A Klinger; Paul S Schopf; David M. Straus
Cc: Edwin K Schneider
Subject: RE: FOIA Request for E-mails

Good morning all,

I have received estimates from Professors Schopf, Maibach, and Dirmeyer, but not yet from Professors Shukla, Straus, or Klinger. Please send them to me as soon as possible.

I have also consulted with Tom Moncure, the University Counsel, and he advises that when you estimate, you should make a reasonable estimate, as if you are in court, under oath. State employees can be held individually civilly liable for knowing violations of the Virginia FOIA statute. He also advises that outside recipients of emails may disclose emails as well, and if they disclose something that we did not, but should have, that could be used as evidence that we did not fully respond to the request.

Tom also believes that we may receive more FOIA requests for this same information, so he advises that you search for and produce the emails right away and do not wait for me to receive the deposit. That way you can gather them at once and be done.

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Thank you,

Elizabeth

Elizabeth Woodley, J.D.
FOIA Compliance Officer
George Mason University
Compliance, Diversity, and Ethics
Phone: (703) 993-5115

From: Elizabeth I Woodley
Sent: Tuesday, September 29, 2015 2:28 PM
To: Jagadish Shukla; Paul A Dirmeyer; Edward W Maibach; Barry A Klinger; Paul S Schopf; David M. Straus
Cc: Edwin K Schneider
Subject: FOIA Request for E-mails

Good afternoon Professors Shukla, Dirmeyer, Maibach, Klinger, Schopf, and Straus,

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Thank you,

Elizabeth

Elizabeth Woodley, J.D.
FOIA Compliance Officer
George Mason University
Compliance, Diversity, and Ethics
Phone: (703) 993-5115

Elizabeth I Woodley

From: Elizabeth I Woodley
Sent: Wednesday, October 07, 2015 9:57 AM
To: Jagadish Shukla; Paul A Dirmeyer; Edward W Maibach; Barry A Klinger; Paul S Schopf; David M. Straus
Cc: Edwin K Schneider
Subject: RE: FOIA Request for E-mails

Good morning all,

I have just heard back from the requester and he has limited his request to only Professor Shukla's and Professor Maibach's records.

Professors Dirmeyer, Klinger, Schopf, and Straus, thank you for your estimates. You do not need to take any further action on this FOIA request. (However, I want to let you know that University Counsel thinks we may receive additional FOIA requests for similar information.)

Professor Shukla and Professor Maibach, please begin your FOIA response, and as you go through the emails, flag any information you believe to be private information, personnel information, student information, proprietary research information, or confidential donor information. I will review the flagged information and decide whether it qualifies for an exemption. Again, the request was for e-mail communications which you may have sent or received from your Mason e-mail address in your capacity as Mason employees from June 1, 2015 to the present which include the keywords "RICO, racketeer, racketeering, DoJ, prosecute, or prosecution". Remember that our response may be challenged in court, that we will have to explain any exemptions we asserted, and that state employees face personal civil liability for willful violations of the FOIA statute. I would like to receive your responses before Wednesday, October 21.

Again, please let me know if you have any questions!

Thank you all,

Elizabeth

From: Elizabeth I Woodley
Sent: Monday, October 05, 2015 10:42 AM
To: Jagadish Shukla; Paul A Dirmeyer; Edward W Maibach; Barry A Klinger; Paul S Schopf; David M. Straus
Cc: Edwin K Schneider
Subject: RE: FOIA Request for E-mails

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If you have any questions, please contact me.

Thank you,

Elizabeth

Elizabeth Woodley, J.D.
FOIA Compliance Officer
George Mason University
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Phone: (703) 993-5115

From: Elizabeth I Woodley
Sent: Tuesday, September 29, 2015 2:28 PM
To: Jagadish Shukla; Paul A Dirmeyer; Edward W Maibach; Barry A Klinger; Paul S Schopf; David M. Straus
Cc: Edwin K Schneider
Subject: FOIA Request for E-mails

Good afternoon Professors Shukla, Dirmeyer, Maibach, Klinger, Schopf, and Straus,

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Thank you,

Elizabeth

Elizabeth Woodley, J.D.
FOIA Compliance Officer
George Mason University
Compliance, Diversity, and Ethics
Phone: (703) 993-5115

Elizabeth I Woodley

From: Edward W Maibach
Sent: Thursday, October 08, 2015 11:02 AM
To: Elizabeth I Woodley; Jagadish Shukla
Subject: Re: FOIA Request for E-mails

Hi Elizabeth,

It is my position that the time I spent preparing our letter was not conducted in the course of public business. Rather, it was conducted in my capacity as a private citizen, on my own time. I was not paid by George Mason to create this document, nor does the document relate to the duties listed in my job description. Therefore, I do not believe we have an obligation to disclose my emails related to the RICO letter.

All the best,

Ed

Edward Maibach, MPH, PhD
University Professor, Department of Communication
Director, Center for Climate Change Communication
George Mason University, MS 6A8
Fairfax, VA 22030
www.climatechangecommunication.org

From: Elizabeth I Woodley
Sent: Wednesday, October 7, 2015 9:57 AM
To: Jagadish Shukla; Paul A Dirmeyer; Edward W Maibach; Barry A Klinger; Paul S Schopf; David M. Straus
Cc: Edwin K Schneider
Subject: RE: FOIA Request for E-mails

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Professor Shukla and Professor Maibach, please begin your FOIA response, and as you go through the emails, flag any information you believe to be private information, personnel information, student information, proprietary research information, or confidential donor information. I will review the flagged information and decide whether it qualifies for an exemption. Again, the request was for e-mail communications which you may have sent or received from your Mason e-mail address in your capacity as Mason employees from June 1, 2015 to the present which include the keywords "RICO, racketeer, racketeering, DoJ, prosecute, or prosecution". Remember that our response may be challenged in court, that we will have to explain any exemptions we asserted, and that state employees face personal

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Again, please let me know if you have any questions!

Thank you all,

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From: Elizabeth I Woodley

Sent: Monday, October 05, 2015 10:42 AM

To: Jagadish Shukla; Paul A Dirmeyer; Edward W Maibach; Barry A Klinger; Paul S Schopf; David M. Straus

Cc: Edwin K Schneider

Subject: RE: FOIA Request for E-mails

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Phone: (703) 993-5115

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Cc: Edwin K Schneider

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