



September 29, 2009

DO, Assistant Director,  
Disclosure Services  
Department of the Treasury  
1500 Pennsylvania Avenue, NW  
Washington, DC 20220

**RE: NOTICE OF APPEAL, FOIA Request – Communications regarding  
“cap-and-trade”, Treasury FOIA No. 2009-04-090**

**BY ELECTRONIC AND CERTIFIED MAIL**

Dear Treasury FOIA Staff,

Pursuant to our Freedom of Information Request seeking documents relating to Treasury’s deliberations over hypothetical efforts to administer or otherwise manage elements of a greenhouse “cap-and-trade” scheme,<sup>1</sup> and related communications, please be informed that response of five documents respectively produced on September 11 (redacted) and 18 (unredacted, if partially withheld), and no emails fails any reasonable test for compliance with the FOI Act. constitutes an effective denial of our Request.

As such, please consider this Appeal and notice of intent to sue if Treasury does not come into compliance with its legal obligations in a reasonable period of time.

Specifically, we note our numerous communications with Treasury’s Office of Environment and Energy from April through July 2009, including its Director’s stated belief in a telephone conversation of April 30, 2009 that our Request covered nearly every document and email created by the Office of Environment and Energy.

---

<sup>1</sup> Specifically, as per our written April 30, 2009 post-conversation narrowing at your request, we sought “hypothetical or actual proposals or programs being developed or discussed by the Department of Treasury, or by other government units, which might originate out of or be managed in whole or in part by Treasury; the programs or proposals, whether international or domestic, involve ‘cap-and-trade’ schemes that deal with ‘carbon’, ‘carbon dioxide’ or ‘greenhouse gases’; received or sent by or within the Office of the Deputy Secretary for Environment and Energy since 1st August 2008”.

CEI Treasury Notice of Appeal  
September 29, 2009  
Page Two of Two

CEI believes that Treasury is withholding numerous documents responsive to our Request, and that as such Treasury is in violation of FOIA's requirement of identifying responsive documents. Further, Treasury is demonstrably withholding portions of those documents excerpted in its response in violation of FOIA. As such, Treasury is in violation of its obligations to also produce an index and description of those responsive documents being withheld in whole or in part and Treasury's basis for such withholding

Due to these failures to comply with the FOI Act's requirements, CEI has prepared a Complaint seeking Treasury's immediate compliance. We intend to file this by October 15, 2009, if by then Treasury has not altered its failure and/or refusal to comply.

Please promptly provide any response including index and/or responsive documents addressed to me and/or CEI General Counsel Sam Kazman by email ([CHorner@cei.org](mailto:CHorner@cei.org), [SKazman@cei.org](mailto:SKazman@cei.org)) and/or fax at 202.331.0640.

Sincerely,

Christopher C. Horner, Esq.

1899 L Street NW, Suite 1200  
Washington, DC 20036  
202.331.2260 (O)