

**EPN Comments on EPA's Freedom of Information Act
Regulations Update**

Docket No.: EPA-HQ-OGC-2022-0885

February 26, 2026

The [Environmental Protection Network](https://www.epn.org/) (EPN) harnesses the expertise of more than 750 former Environmental Protection Agency (EPA) career staff and confirmation-level appointees from Democratic and Republican administrations to provide the unique perspective of former regulators and scientists with decades of historical knowledge and subject matter expertise.

EPN opposes EPA's proposed revision to 40 CFR 2.104(g) which would eliminate a provision requiring expedited processing and fee waivers for Freedom of Information Act (FOIA) requests for EPA records that pertain to an Environmental Justice need that will be used to inform an affected community ("the EJ EP provision"). EPA has singled out the EJ EP provision for removal from EPA's recently amended FOIA regulations as part of the Administration's disingenuous campaign to deny that certain communities face a multitude of risks to the health and wellbeing of their members such that they may be more vulnerable to particular exposures of pollutants. Erasing Environmental Justice from federal policy will not address disparities in environmental outcomes. Rather, it is apparent that EPA's posture that "all" Americans deserve a healthy environment reflects a return to the era when "all" Americans did not include citizens residing in communities disproportionately burdened by current and legacy pollution.

EPA offers three reasons for eliminating the EJ EP provision recognizing that environmental justice considerations warrant prompt processing of FOIA requests and that fee waivers are necessary to ensure that organizations with limited resources are not inhibited from requesting information from EPA. None of the reasons provide support for EPA's abrupt change of course.

First, using a Kafkaesque rationale, EPA contends that the Agency's unwarranted elimination of the EJ Screen mapping tool inhibits review and analysis of whether a FOIA request qualifies for processing under the EJ Provision. But any difficulty in reviewing requests from Environmental Justice communities is a self-inflicted problem of EPA's own making.¹ EPA supports this contention by noting that less than 2.7% of EJ EP requests were granted from the November 13, 2023 effective date of the EJ EP provision through August 31, 2025. This data does not differentiate between the rate of denial of EJ EP requests during the prior Administration and the current Administration whose hostility to environmental justice is well known. Moreover, the mere fact that EPA rejects most such requests is no reason to bar requests that are meritorious.

¹ Even so, there are many instances where EPA has utilized census (income, race) and environmental indicator data to identify disadvantaged communities, such as the 2023 analysis to determine whether a community is disadvantaged for the purposes of implementing programs under the IRA (<https://zenodo.org/records/14833639>), that could be used to determine instances for potential expedited review. Similarly, in line with the Administration's efforts to work with state governments and pursue cooperative federalism, EPA could consider disadvantaged communities identified by many state agencies across the country (for example, <https://ejstatebystate.org/>).

Second, EPA contends that elimination of the EJ EP provision is consistent with Executive Order 14151, “Ending radical and Wasteful Government DEI Programs and Preferencing,” which calls for “the termination of all discriminatory programs, including illegal diversity, equity, inclusion and accessibility initiatives. An Executive Order provides no basis for actions taken that are detrimental to persons outside the government. Moreover, providing communities impacted by environmental injustices the modest benefit of expedited FOIA processing simply acknowledges the greater needs of some communities and hardly constitutes discrimination. No Court has concluded that “DEI” is per se illegal discrimination. Rather, EPA has historically defined “Environmental Justice” as:

“the fair treatment and meaningful involvement **of all people regardless of race, color, national origin, or income** with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies. EPA has this goal for all communities and persons across this Nation. It will be achieved when everyone enjoys the same degree of protection from environmental and health hazards and equal access to the decision-making process to have a healthy environment in which to live, learn, and work.”²

Environmental Justice is color blind.

Finally, EPA contends that other provisions of 40 CFR 2.104(g) implementing the FOIA 5 U.S.C. 552(a)(6)(E)(i)(I) “compelling need” standard for expedited processing are sufficient to ensure that EPA expedites FOIA requests relating to environmental justice appropriately. However, the two circumstances triggering the compelling need standard, imminent threats to the life or safety of individuals or urgency to inform the public about actual or alleged federal activities by a person “primarily” engaged in disseminating information to the public are much narrower than the EJ EP provision. Imminent risk to health or safety of an individual is not the same as the heavier pollution burden historically borne by some communities. Had the compelling need standard been adequate, EPA would not have established the EJ EP provision in November 2023. EPA’s rationale for eliminating the EJ EP provision does not explain what has changed, other than Administration policy, since the EJ EP provision was adopted. Further, EPA’s conclusory statement that FOIA requestors can still request fee waivers (but not expedited processing) pursuant to the general authorization in 40 CFR 2.104(n) does not explain why the limitations in EPA’s FOIA regulations that prompted adoption of the EJ EP provision in November 2023 are no longer relevant.

The Trump Administration has repeatedly pledged to fight for working Americans and communities left behind by prior administrations. Many of the communities that depend on the EJ FOIA provision are precisely those communities: low-income, rural, and industrial towns bearing the legacy burden of pollution that predates modern environmental regulation. Eliminating a modest, targeted provision that reduces financial barriers for these communities to access information about their own environment is inconsistent with the Administration’s stated commitment to Americans facing significant pollution burdens.

We at EPN are well aware that EPA’s real reason for eliminating the EJ EP provision is the current Administration’s desire to pretend that environmental injustices never occur despite the wealth of evidence to the contrary.³ Eliminating the EJ EP provision is yet another example of avoiding reminders of

² <http://www.epa.gov/environmentaljustice/> (emphasis added).

³ See e.g. Congressional Research Service, U.S. Environmental Protection Agency (EPA) Environmental Justice Activities and Programs (February 13, 2024). <https://www.congress.gov/crs-product/R47920>.

inconvenient truths. Unless the word “justice” is now to take on negative connotations, the special need for free and expedited FOIA processing faced by some communities continues to exist and EPA’s rationale for their retraction does not withstand scrutiny. This shameful chapter in EPA’s history will one day come to a close.