

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

**NATURAL RESOURCES DEFENSE
COUNCIL,**

Plaintiff,

v.

MICHAEL LEAVITT, et al.,

Defendants.

Civil Action 04-01295 (HHK)

MEMORANDUM OPINION

Plaintiff, the Natural Resource Defense Council (“NRDC”), brings this action for declaratory and injunctive relief pursuant to the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552. NRDC alleges that defendants, Michael Leavitt, Administrator of the United States Environmental Protection Agency (in his official capacity only) and the United States Environmental Protection Agency (collectively, “EPA”), have violated FOIA by failing to respond sufficiently to a request for documents concerning stockpiles of the pesticide methyl bromide.

In an opinion and order filed March 14, 2006, the court addressed the parties’ cross-motions for summary judgment and resolved the issues presented by the motions [# 6 and 7]. The court also ordered EPA to submit three documents EPA uncovered when preparing its response to plaintiff’s cross-motion, and which are the subject of EPA’s supplemental motion for summary judgment [#11], for *in camera* review so that the court could assess whether EPA has

properly invoked FOIA exemption 5. Pursuant to the court's order, EPA has submitted the three documents for the court's *in camera* review.

Having reviewed these three documents, the court concludes that they fall squarely within the deliberative process privilege embodied in FOIA exemption 5 and that there is no segregable information in the two documents withheld in their entirety. Thus, EPA's supplemental motion is granted.

An appropriate order accompanies this memorandum.

Henry H. Kennedy, Jr.
United States District Judge

Dated: January 22, 2008