



**Judicial
Watch**
*Because no one
is above the law!*

February 14, 2012

VIA CERTIFIED MAIL & FACSIMILE

FOIA Requester Service Center
1000 Independence Avenue, SW
Washington, DC 20585
Fax: 202-586-0575

Re: Freedom of Information Act Request

Dear Freedom of Information Officer:

On February 13, 2012 it was reported that Fisker Automotive announced its intention to renegotiate the terms of its \$528.7 million conditional loan from the Department of Energy. Reports indicate that since May 2011, Fisker Automotive has failed to meet certain production and sales milestones, leading the DOE to block access to further funding for the automaker.¹

Pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552, Judicial Watch, Inc. hereby requests that the Department of Energy produce within twenty (20) business days, any and all records identifying, describing, or setting forth the milestones that have been missed by Fisker Automotive under the terms of its \$528.7 million conditional loan from the U.S. Department of Energy.

If any responsive record or portion thereof is claimed to be exempt from production under FOIA, please provide sufficient identifying information with respect to each allegedly exempt record or portion thereof to allow us to assess the propriety of the claimed exemption. *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973), *cert. denied*, 415 U.S. 977 (1974). In addition, any reasonably segregable portion of a responsive record must be provided, after redaction of any allegedly exempt material. 5 U.S.C. § 552(b).

For purposes of this request, the term “record” shall mean: (1) any written, printed, or typed material of any kind, including without limitation all correspondence, memoranda, notes, messages, letters, cards, facsimiles, papers, forms, telephone messages, diaries, schedules, calendars, chronological data, minutes, books, reports, charts, lists, ledgers, invoices, worksheets, receipts, returns, computer printouts, printed matter, prospectuses, statements, checks, statistics, surveys, affidavits, contracts, agreements, transcripts, magazine or newspaper articles, or press releases; (2) any

¹ Jeanne Roberts, “Fisker to Renegotiate DOE Loan.” Energy Boom, February 13, 2012, <<http://www.energyboom.com/transportation/fisker-renegotiate-doe-loan>>

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electronically, magnetically, or mechanically stored material of any kind, including without limitation all electronic mail or e-mail; (3) any audio, aural, visual, or video records, recordings, or representations of any kind; (4) any graphic materials and data compilations from which information can be obtained; and (5) any materials using other means of preserving thought or expression.

Judicial Watch also hereby requests a waiver of both search and duplication fees pursuant to 5 U.S.C. §§ 552(a)(4)(A)(ii)(II) and (a)(4)(A)(iii). Judicial Watch is entitled to a waiver of search fees under 5 U.S.C. § 552(a)(4)(A)(ii)(II) because it is a member of the news media. *Cf. National Security Archive v. Department of Defense*, 880 F.2d 1381, 1387 (D.C. Cir. 1989)(defining news media within FOIA context). Judicial Watch has also been recognized as a member of the news media in other FOIA litigation. *See, e.g., Judicial Watch, Inc. v. U.S. Department of Justice*, 133 F. Supp.2d 52 (D.D.C. 2000); and, *Judicial Watch, Inc. v. Department of Defense*, 2006 U.S. Dist. LEXIS 44003, *1 (D.D.C. June 28, 2006). Judicial Watch regularly obtains information about the operations and activities of government through FOIA and other means, uses its editorial skills to turn this information into distinct works, and publishes and disseminates these works to the public. It intends to do likewise with the records it receives in response to this request.

Judicial Watch also is entitled to a complete waiver of both search fees and duplication fees pursuant to 5 U.S.C. § 552(a)(4)(A)(iii). Under this provision, records:

shall be furnished without any charge or at a charge reduced below the fees established under clause (ii) if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of government and is not primarily in the commercial interest of the requester.

5 U.S.C. § 552(a)(4)(A)(iii).

Judicial Watch is a 501(c)(3), not-for-profit, educational organization, and, by definition, it has no commercial purpose. Judicial Watch exists to educate the public about the operations and activities of government, as well as to increase public understanding about the importance of ethics and the rule of law in government. The particular records requested herein are sought as part of Judicial Watch's ongoing efforts to document the operations and activities of the federal government and to educate the public about these operations and activities. Once Judicial Watch obtains the requested records, it intends to analyze them and disseminate the results of its analysis, as well as the records themselves, as a special written report. Judicial Watch will also educate the public via radio programs, Judicial Watch's website, and/or newsletter, among other outlets. It also will make the records available to other members of the media or

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researchers upon request. Judicial Watch has a proven ability to disseminate information obtained through FOIA to the public, as demonstrated by its long-standing and continuing public outreach efforts.

Given these circumstances, Judicial Watch is entitled to a public interest fee waiver of both search costs and duplication costs. Nonetheless, in the event our request for a waiver of search and/or duplication costs is denied, Judicial Watch is willing to pay up to \$350.00 in search and/or duplication costs. Judicial Watch requests that it be contacted before any such costs are incurred, in order to prioritize search and duplication efforts.

In an effort to facilitate record production within the statutory time limit, Judicial Watch is willing to accept documents in electronic format (e.g. e-mail, .pdfs). Judicial Watch will also accept the "rolling production" of documents.

If you do not understand this request or any portion thereof, or if you feel you require clarification of this request or any portion thereof, please contact us immediately at 202-646-5172 or jalthen@judicialwatch.org. We look forward to receiving the requested documents and a waiver of both search and duplication costs within twenty (20) business days. Thank you for your cooperation.

Sincerely,



John Althen
Judicial Watch

Enclosure



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Fisker to Renegotiate DOE Loan

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Fisker to Renegotiate DOE Loan

By [Jeanne Roberts](#) [3] on February 13, 2012

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Fisker Karma

 [Fisker Karma.jpg](#) [7]

Fisker Karma

[Fisker Automotive](#) [8], the vehicle manufacturer which took the clean transportation world by storm in 2009 when it announced the debut of its [Karma](#) [9] model plug in hybrid vehicle, has announced its intention to [renegotiate](#) [10] the terms of its \$528.7 million conditional loan from the U.S. Department of

Energy, or DOE.

The loan was contingent on Fisker meeting certain production and sales milestones, which it has apparently failed to do since [May of last year](#) [11], in spite of delivery of [225 Karmas to showroom floors](#) [12] and another 1,200 languishing on the production line.

Fisker's failure to comply led the DOE to block access to further funding, triggering a layoff of 26 workers in Fisker's Wilmington, Delaware manufacturing location and about 45 engineers in its Anaheim, California headquarters. The DOE has not said which milestones were missed.

So far, according to a report from the company, it has received \$193 million of the total loan package from the DOE, much of which went to develop and commercialize the Karma, which began appearing late in 2011.

The Karma, able to run 100 miles on a single gallon of gasoline, could conceivably use only a single tank of fuel per year if driven less than 50 miles per day and plugged in overnight, according to company spokespersons. The Karma costs \$87,900 before tax credits.

When Fisker moved into its Wilmington, Delaware factory [13] -- a former General Motors facility rescued from Brownfield anonymity by an \$11.7 million financial settlement with GM and retooling of the assembly floor -- company officials said the company would eventually be producing 75,000 to 100,000 Nina-model vehicles by 2014, from a production staff of 2,000 [14] and a vendor and supplier staff of 3,000.

The Nina is another hybrid electric motor with lithium-ion battery backup. When depleted, the car runs on a generator driven by a gasoline engine. The Nina's sticker price is reported as roughly \$47,000 [15].

Fisker, headquartered in Anaheim, California, with one site in Michigan, also received a \$13 million loan from the state of Delaware, and a \$9 million state grant on startup, as well as \$300 million in venture capital from backers, one of whom was A123 Systems [16] (Nasdaq: AONE), which was slated to supply batteries for the Karma.

Having failed to meet requirements, the company now falls under a Congressional scrutiny triggered not merely by missed milestones but also as a result of several other DOE-funded clean energy company failures, notably Solyndra [17] (solar panels), Beacon Power Corp [18] (flywheel energy storage), and Ener1 Inc. [19], a supplier of lithium-ion batteries for electric vehicles.

When Fisker first arrived on the scene, it was billed (and celebrated) as a job creator in an economy that had very recently seen the meltdown of the Big Three auto makers [20] in the U.S. Chrysler and GM both took a bailout; Ford slid by on cash reserves.

As a result, Fisker's presumed failure reverberates through the halls of Congress, as wary lawmakers look over their shoulders for the next Solyndra and Judicial Watch files [21] under the Freedom of Information Act to access records related to the DOE loan.

Tags: A123 Systems [22], Beacon Power Corporation [23], Ener1 Inc [24], Fisker [25], Ford [26], General Motors [27], U.S. Chrysler [28], USD [29], A123 Systems [30], Beacon Power Corp. [31], Chrysler [32], clean transportation [33], conditional loan guarantee [34], electric car [35], Ener1 Inc. [36], fisker automotive [37], Ford [38], GM [39], Karma [40], Nina [41], plug-in hybrid vehicle [42], Solyndra [43], U.S. Department of Energy (DOE) [44], ascii [45], California [46], Congress [47], Delaware [48], energy [49], manufacturing [50], Michigan [51], transportation [52], U.S. Department of Energy [53], venture capital [54]



Jeanne Roberts is a freelance writer on environment and sustainability issues. In her previous life, she worked as both a reporter and a communications