

Comment from Senior Fellow Richard J. Pierce, Jr.
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At the appropriate time, I will suggest that we change the language in line 192 from “information on which they have relied” to “information they may have considered.”

In *Sierra Club v. Costle*, Judge Wald made an important distinction between information on which an agency relies--all of which must be publicly disclosed in the statement of basis and purpose--and information that the agency may have considered in some way but is not relying on--which the agency need not disclose. She made the distinction in the context of information that falls within the scope of the deliberative process exception to FOIA, e.g., communications from the President, the Senate Majority Leader and the Secretary of Energy to the EPA Administrator, but I think the same principle applies to information that falls within the 2 FOIA exemptions that this project addresses.

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