



# United States Department of the Interior

OFFICE OF INSPECTOR GENERAL  
12030 Sunrise Valley Drive  
Reston Plaza 1, Suite 350  
Reston, VA 20191



OCT 6 2010

James A. Galloway  
3200 Dunlap Drive  
Helena, MT 59602

Re: 10-FOI-00055

Dear Mr. Galloway:

This is in response to your email message dated June 20, 2010, which was received by the Office of Inspector General (OIG) on that same date, in which you ask for information under the Freedom of Information Act (FOIA), 5 U.S.C. § 552. You ask for a copy of the findings and all related documentation regarding the BLM Casper Field Office investigation that was initiated in September 2007.

As agreed on August 24, 2010, we are providing a Report of Investigations as a partial response. The report contains eleven pages. One page is being withheld in its entirety, and ten pages contain come information that is being withheld.

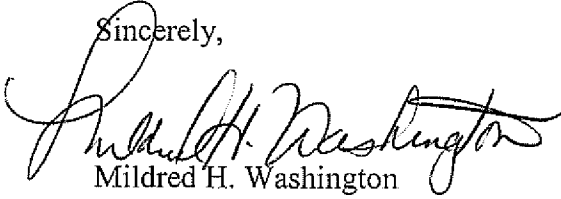
Deletions have been made of information that is exempt from release under the provisions of 5 U.S.C. §§ 552(b)(5), (b)(6), and (b)(7)(C). These sections exempt from disclosure items that pertain to: (1) inter-agency or intra-agency memoranda or letters which would not be available by law to a party other than an agency in litigation with the agency; (2) personnel and other similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy; and (3) records of information compile for law enforcement purposes, but only to the extent that the production of such law enforcement records or information could reasonably be expected to constitute an unwarranted invasion of personal privacy. Exemption (b)(5) was used to protect information pertaining to the bureau's deliberative process. Exemptions (b)(6) and (b)(6),and (b)(7)(C) were used to protect the personal privacy interests of witnesses, interviewees, middle and low ranking federal employees and investigators, and other individuals named in the investigative file. In addition, the material is exempt from release under the provisions of 5 U.S.C. § 552a(k)(2) of the Privacy Act, pertaining to investigatory material compiled for law enforcement purposes.

If you disagree with this response, you may appeal the decision by writing to the FOIA Appeals Officer, U.S. Department of the Interior, 1849 C, Street, N.W., MS-6556, Washington, D.C. 20240, no later than 30 workdays after the date of the final response. Due to disruptions to the mail service in the Washington, D.C. area, you may want to consider an alternative means of

communicating with the Department of the Interior, e.g., facsimile, e-mail, Federal Express, etc. There may be a delay in our receipt of mail sent through the U.S. Postal Service. The FOIA Appeal Officer's facsimile number is (202) 208-6677. Your appeal should be filed in accordance with the regulations set out in 43 C.F.R. §§ 2.28-2.32, a copy of which is enclosed.

Please contact me at (703) 487-5438, if you have any questions concerning this response.

Sincerely,



Mildred H. Washington  
Information Disclosure Specialist

Enclosures



**United States Department of the Interior  
Office of Inspector General**

**REPORT OF INVESTIGATION**

<b>Case Title</b> BLM Casper Field Office Employees	<b>Case Number</b> OI-CO-08-0223-I
<b>Reporting Office</b> Rapid City, SD	<b>Report Date</b> November 3, 2009
<b>Report Subject</b> Prosecutive Report of Investigation	

**SYNOPSIS**

This investigation was initiated in March 2008 based on a referral from the Bureau of Land Management (BLM), Office of Law Enforcement and Security (OLES), alleging that BLM employees at the Casper, Wyoming Field Office showed favoritism during the Eagle Creek Land Exchange Proposal in Wyoming. Our investigation focused on the official acts conducted by James Murkin, [REDACTED], Casper Field Office (CFO) and a 12-year friendship he had with [REDACTED] the beneficiary of the ongoing land exchange. Our investigation also examined allegations that Murkin's [REDACTED] may have received a scholarship from [REDACTED] National Landscape Conservation System, Bureau of Land Management in Washington, D.C.

Our investigation disclosed that during an ongoing land exchange process, Murkin shared a personal friendship with [REDACTED] and regularly met with [REDACTED] and exchanged the costs of 12 lunches. We also determined that Murkin and his [REDACTED] dined twice with the [REDACTED] and that [REDACTED] paid for these dinners. Our investigation also disclosed that [REDACTED] was not required to prepay for \$916.55 in materials he received from [REDACTED] business for construction of a patio, and according to a [REDACTED] employee, this was outside normal business practices. Finally, our investigation found that Murkin did not report the value of these lunches/dinners paid for by [REDACTED] as well as his [REDACTED] employment for [REDACTED] during 2002, on [REDACTED] annual financial disclosure reports. Allegations that [REDACTED] received a scholarship from [REDACTED] were not substantiated.

Regarding official acts by [REDACTED], our investigation showed that [REDACTED] had approved the land exchange's feasibility report, signed an Agreement to Initiate a Land Exchange (ATI), and facilitated a meeting between [REDACTED] the Office of Solicitor (SOL) and himself in 2007.

This matter was discussed with an Assistant United States Attorney for the District of Wyoming, who

<b>Reporting Official/Title</b> [REDACTED] Special Agent	<b>Signature</b>
<b>Approving Official/Title</b> Jack L. Rohmer, Special Agent-in-Charge	<b>Signature</b>

requested a copy of this report for review.

**BACKGROUND**

Eagle Creek Ranch (ECR), LLC, is a Wyoming-based farm and ranch operation [REDACTED]  
 [REDACTED] is a [REDACTED]  
 [REDACTED]  
 [REDACTED]

**[REDACTED] Relationship**

Throughout this investigation, [REDACTED] recollections and characterizations of his relationship with [REDACTED] changed. Specifically, [REDACTED] initially portrayed his relationship with [REDACTED] as a professional relationship, but after further questioning by Office of Inspector General (OIG) investigators, [REDACTED] admitted the relationship evolved into a friendship. During a previous investigation conducted by OIG in April 2006, OIG File No. [REDACTED] regarding allegations of corruption, kickbacks, or receiving gratuities on the part of officials at the BLM CFO, [REDACTED] denied that [REDACTED] had corruptly influenced him; that he had ever accepted anything of value from [REDACTED] or that he had ever used his position to benefit [REDACTED] or himself. During the current investigation, we learned from [REDACTED] that he had become friends with [REDACTED] soon after he became the Field Manager for the BLM CFO in about 1997.

**Eagle Creek Land Exchange Timeline**

Date	Activity
1997	[REDACTED] becomes Field Manager of the BLM Casper Field Office. By his own admission, he became friends with [REDACTED] soon thereafter.
1998	Initial discussions began between BLM and [REDACTED] about a land exchange wherein BLM would acquire 30 acres of ECR land in exchange for 2,072 acres of BLM grazing land.
October 1, 2003	At [REDACTED] direction, the CFO formally opened a case file on the land exchange and [REDACTED] CFO, began writing a Feasibility Analysis Report (FAR) on the land exchange. ( <i>Agent's Note: A FAR is required for every land exchange that advances for consideration past the preliminary evaluation stage. The FAR serves as a communication and coordination tool between staffs at all levels of the organization and to document the preliminary information and assess the entire land exchange processing work effort.</i> )
February 4, 2004	[REDACTED] forwarded a draft copy of the FAR to [REDACTED] Reality Specialist, BLM Wyoming State Office, Cheyenne, WY for [REDACTED] review.
July 15, 2004	After receiving some suggestions and guidance from [REDACTED] a finalized and signed copy of the FAR was sent to [REDACTED] Wyoming State Director, for [REDACTED] review and signature.
July 23, 2004	While waiting for [REDACTED] signature, the State Office provided [REDACTED] [REDACTED] SOL, Rocky Mountain Region, Lakewood, CO, with a copy of the FAR for [REDACTED] review and concurrence. As a result of additional information

	obtained from the Montana Appraisal Service Directorate, a revised FAR was written and sent to [REDACTED] for [REDACTED] signature.
<b>April 26, 2006</b>	[REDACTED] and [REDACTED] Minerals and Lands, BLM, CFO, signed the revised FAR.
<b>June 2, 2006</b>	SOL approved the FAR, and [REDACTED] signed the FAR on June 14, 2006. The FAR was then sent to the National Land Exchange Team (NET), Washington, D.C., for their review.
<b>October 11, 2006</b>	The NET approved the FAR that resulted in an Agreement to Initiate a Land Exchange (ATI).
<b>January 9, 2007</b>	The ATI was signed by [REDACTED] and [REDACTED] [REDACTED] [REDACTED] [REDACTED] ( <i>Agent's Note: The purpose of the ATI is to document the roles, responsibilities and time frames for processing the land exchange. Regulatory emphasis is placed on establishing a time schedule for completing the appraisal process and reaching an agreement on value.</i> )
<b>Present date</b>	The land exchange between BLM and [REDACTED] has not been finalized. The proposal is currently at the CFO pending the development of a plan to address the protection of archeological sites located within the boundaries of the BLM's parcel. According to [REDACTED] the land exchange between BLM and [REDACTED] is unlikely to proceed because BLM and [REDACTED] were unable to agree on the disposition of two archeological tracts. [REDACTED] also noted that [REDACTED] has listed the 30 acres of ECR land for sale.

### DETAILS OF INVESTIGATION

This investigation was initiated in March 2008 based on a referral from the BLM OLES informing the OIG that Murkin, while employed as Manager for the Casper, Wyoming Field Office, may have violated conflict of interest laws by showing favoritism during the course of his official duties to [REDACTED] owner of Eagle Creek Ranch (ECR) with respect to a proposed land exchange. Additionally, we received information that [REDACTED] [REDACTED] [REDACTED] may have [REDACTED] (Attachment 1).

The allegations in this matter are addressed in the following Sections of this report:

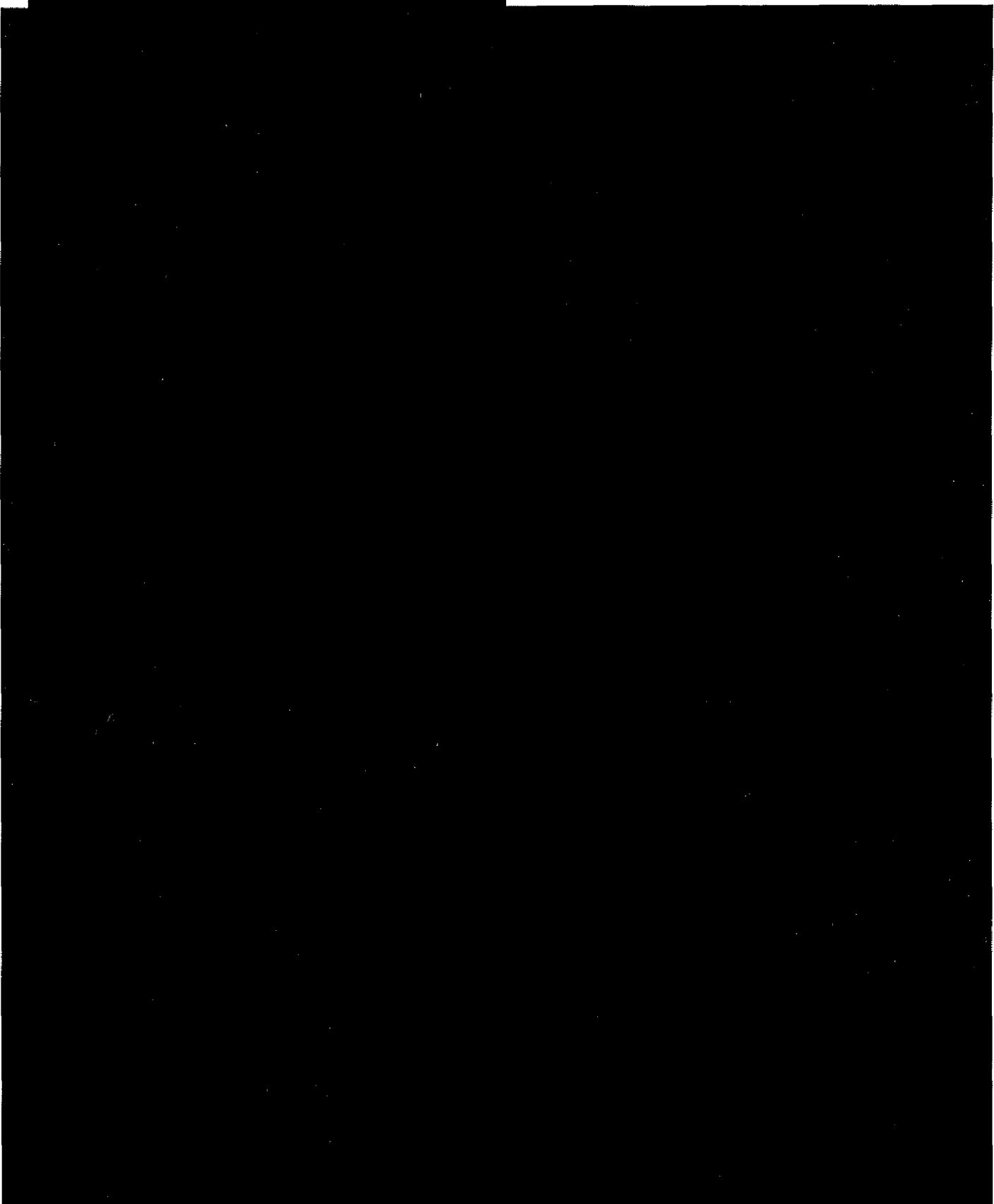
1. [REDACTED] involvement in the Eagle Creek Land Exchange
2. Gratuities and Preferential Treatment
3. Standards of Conduct for Executive Branch Employees

During this investigation, we interviewed key BLM employee and other individuals, including [REDACTED] [REDACTED] we conducted a review of over six thousands e-mails, contract files and other documents; and we interviewed [REDACTED]. We also reviewed the Eagle Creek Land Exchange file at the CFO and obtained copies of various documents referred to throughout this Report.

1. [REDACTED] involvement in the Eagle Creek Land Exchange

In 2008, an exchange of email between two BLM employees revealed there was a perception that [REDACTED] and [REDACTED] were trying to improperly influence the ongoing land exchange (Attachments 2





[REDACTED]

2. Gratuities and Preferential Treatment

During [REDACTED] interview in April 2009, [REDACTED] stated [REDACTED] understood the definition of a prohibited source. [REDACTED] confirmed that [REDACTED] received annual ethics training that helped reinforce [REDACTED] knowledge about [REDACTED] ethical obligations regarding gifts from outside sources and between federal employees; outside activities; and political activities. [REDACTED] admitted [REDACTED] by definition, would be classified as a prohibited source.

[REDACTED] acceptance of lunches and dinners from [REDACTED]

[REDACTED] over a 10-year period, [REDACTED] and [REDACTED] had lunch together "no more than a dozen times." During these lunches, [REDACTED] typically ate at Dorie's Restaurant in Casper, WY and during these lunches, [REDACTED] would "split the tab" or would take turns buying each other's lunch. [REDACTED] saw nothing wrong with going to lunch or dinner with [REDACTED] since it had no influence on his decision-making. [REDACTED] that a typical meal at Dorie's Restaurant cost between \$4 and \$6. Murkin also acknowledged [REDACTED] [REDACTED]

Murkin confirmed he and his [REDACTED] had two dinners with [REDACTED] at the Fire Rock Steakhouse and Grill, a restaurant owned by [REDACTED] and one dinner at [REDACTED] private residence. Murkin indicated that to his recollection all of these dinners occurred sometime during 2006-2008 and that [REDACTED] had paid for these dinners. Murkin estimated the total cost of these dinners was approximately \$140. Murkin subsequently admitted that accepting dinners from [REDACTED] while the land exchange was being processed was "probably wrong" under the ethics rule, although he continued to rationalize his ongoing actions by saying it was difficult to say no to the free meals. Murkin said he never received a bill for the dinners (Attachments 6 and 7).

[REDACTED] corroborated [REDACTED] statements in reference to the aforementioned lunches. According to [REDACTED] and [REDACTED] at least two to three times but that it could have been as many as five or six times. Due to physical and mental impairments, [REDACTED] said [REDACTED] could not remember specifically if [REDACTED] and [REDACTED] eaten at the Fire Rock Steakhouse and Grill for lunch. However, [REDACTED] stated with confidence that [REDACTED] had dined at [REDACTED] personal residence at least twice (Attachment 8).

Agent's Note: [REDACTED]

[REDACTED] acceptance of preferential treatment from [REDACTED]

[REDACTED]

6).

*Agent's Note:*

[REDACTED]

[REDACTED]

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In an interview, [REDACTED] an employee of McMurry Ready-Mix, Casper, WY, advised that it was not the normal business practice of McMurry Ready-Mix to provide materials and or other items to any of its customers without receiving payment first. [REDACTED] opined that if a person received this type of "service" they would "have to know someone in the company" (Attachment 10). [REDACTED] also confirmed that Murkin did not receive any "discount" for any of the materials he purchased from [REDACTED] Ready-Mix.

[REDACTED]

### 3. Standards of Conduct for Executive Branch Employees

[REDACTED] failure to file [REDACTED] annual confidential filing properly

We obtained and reviewed Office of Government Ethics (OGE) Form 450; Annual Financial Disclosure [REDACTED] from 2000-2009. We found throughout [REDACTED] had never disclosed [REDACTED] acceptance of free lunches, dinners, or any other gratuities on [REDACTED] OGE-450s. Schedule B – Part II of the Financial Disclosure Report, titled "Gifts, Reimbursements and Travel Expenses," requires a public filer to report any gift (i.e. tangible items, transportation, lodging, food, or entertainment) that he/she received exceeding \$260 from any one source (Attachment 12).

When confronted with the above-mentioned details and asked why he did not report any of these items, [REDACTED] Confidential Financial Disclosure Reports."

Employment of

was employed by a prohibited source, in the summer of 2002 for approximately two or three weeks. At the time of employment, indicated, which he claimed on his 2002 tax returns.

working for a prohibited source and did not think it was a problem. Because did not see it as a problem, did not have to report it to an ethics counselor nor did feel had to disclose it on his annual OGE-450s (Attachment 7).

[REDACTED]

Alleged Scholarship from

stated none of, including, received any type of scholarships or financial support or aid while attending college. (Attachment 7).

During this investigation, we determined that. Additionally, our file reviews and witness interviews did not receive any financial benefits, to include scholarships, while attending. was not interviewed during the course of the investigation.

Ethics training

In an interview, Deputy Ethics Counselor, Bureau of Land Management (BLM), Washington, DC, was asked if had violated any laws, regulations, or DOI instructions in regard to this matter. however, was unable to provide us with a definitive answer. stated that ethics and ethical conduct is largely a self-policing matter and it is up to the individual to uphold the specific standards. further said BLM does provide its employees with training about the ethical do's and don'ts, but indicated that nothing stops any employee from breaking the rules if they were so inclined (Attachment 13).

During interview on acknowledged that had received ethics training annually regarding prohibited sources, and that was probably a prohibited source. further stated that in hindsight, probably should have removed from the decision-making process regarding the land exchange (Attachment 11).

response to failed to disclose his relationship with and previous admissions:

was asked why failed to disclose ongoing relationship with during the course

of a previous DOI-OIG investigation [REDACTED] conducted by Special Agent [REDACTED] [REDACTED] stated that SA [REDACTED] statement was incorrect and he had disclosed his ongoing relationship with [REDACTED] to SA [REDACTED] at that time. [REDACTED] indicated to SA [REDACTED] that it was not [REDACTED] "intention to lie to this [REDACTED] (SA [REDACTED]) or withhold information" and "I told [REDACTED] everything [REDACTED] asked."

When we asked [REDACTED] again to further explain and clarify why he had not been truthful and candid regarding his relationship with [REDACTED] with SA [REDACTED] [REDACTED] stated,

"In my mind what [REDACTED] was asking me was not about my personal relationships and in date wise, I cannot remember... The thing is that I'm not trying to cover anything up. You guys are asking me, I have been open and honest with you from the start about the meals, about the relationship, with my [REDACTED] working and all this other stuff. It was not an [intentional misrepresentation.] I answered the questions as [REDACTED] asked them to the best of my knowledge. Now, if I misinterpreted the questions or whatever, it wasn't an [intentional thing.] I'm not going to lie to you guys, I'm under oath, I'm a federal employee...what is going to get me in more trouble, having a dinner with [REDACTED] or lying to you guys."

[REDACTED] further admitted and agreed that his [REDACTED] employment with [REDACTED] was wrong and stated,

"That was totally off the screen. I had no idea that it was even part of the ethic or any other stuff. I never even thought about it at the time, I explained this fact; I'm talking about a legal aged [REDACTED] Never even dreamed on that I would have to list that. I told you then that I didn't list it and it would be my fault if I was supposed to and I admit that."

When confronted with the fact that [REDACTED] was less than truthful with SA [REDACTED] about his recollections about a 2007 meeting with the Office of the Solicitor (SOL) and [REDACTED] attendance, [REDACTED] stated,

"Look, I'm not disputing that [REDACTED] [REDACTED] was there. When you asked me the question, whether I was thinking about [that] meeting or [another] SOL's meeting, I don't know. I'm not trying to cover-up anything. Look, I made a mistake with [REDACTED] That is something I will have to deal with. Ok, it is not a matter of trying to cover it up, [REDACTED] was there."

In response to our questions about receiving special treatment from [REDACTED] [REDACTED] stated he felt that he did not receive any special treatment and that his relationship with [REDACTED] [REDACTED] was not improper since [REDACTED] had paid full price for all of the materials [REDACTED] had purchased from them. Yet, [REDACTED] also conceded to us that [REDACTED] did not initially pay for these items.

[REDACTED] further said, that in his mind, working with [REDACTED] [REDACTED] had nothing to do with [REDACTED] ongoing relationship with [REDACTED]

Agent's Note: [REDACTED]

"I goofed."

"Not my finest hour, I screwed this one up" (Attachment 16).

SUBJECT(S)

[REDACTED]  
National Landscape Conservation System  
Bureau of Land Management  
Washington, DC

DISPOSITION

[REDACTED]

Ex.5

ATTACHMENTS

1. Case Referral from BLM/OLES, dated February 26, 2008.
2. Email dated March 27, 2008, from [REDACTED]
3. Email dated November 25, 2008, from [REDACTED]
4. IAR – Interview of [REDACTED] dated May 1, 2009.
5. IAR – Interview of [REDACTED] dated May 20, 2009.
6. IAR - Interview of [REDACTED] dated June 8, 2009.
7. IAR – Interview of [REDACTED] dated April 28, 2009.
8. IAR – Interview of [REDACTED] dated June 30, 2009.
9. IAR – Interview of [REDACTED] dated May 1, 2009.
10. IAR – Interview of [REDACTED] May 20, 2009.
11. IAR – Interview of James Murkin, dated July 1, 2009.
12. IAR – Review of James Murkin's Confidential Financial Disclosure Reports, dated March 31, 2009.
13. IAR – Interview of [REDACTED] dated April 21, 2009.
14. IAR – Interview with [REDACTED] dated November 9, 2009
15. IAR – Interview with [REDACTED] dated April 6, 2006
16. IAR – Interview with [REDACTED] dated November 10, 2009

## DEPARTMENT OF THE INTERIOR

## Office of the Secretary

## 43 CFR Part 2

RIN 1090-AA61

## Amendment to the Freedom of Information Act Regulations

AGENCY: Office of the Secretary, Interior.

ACTION: Direct final rule.

**SUMMARY:** This document amends the Department of the Interior's (DOI) regulations implementing the Freedom of Information Act (FOIA), 5 U.S.C. 552. In particular, it: clarifies the time limit that requesters have for filing FOIA appeals; clarifies that requesters must include the required documentation with their appeals or their appeals may be rejected by the FOIA Appeals Officer; clarifies that requesters must file a FOIA request with each separate bureau/office from which they are seeking records; changes the language regarding requests for expedited processing to be consistent with the language used in the FOIA including removing a paragraph in that section pertaining to "due process rights;" makes the use of multitrack processing mandatory for all bureaus and offices; advises requesters that they may contact the bureau/office's FOIA Requester Service Center and the FOIA Public Liaison concerning the status of their requests; and includes current contact information for DOI's FOIA and Public Affairs/Office of Communications Contacts and its reading rooms (Headquarters). Additionally, the final rule revises the definitions of the terms: "representative of the news media" and "freelance journalist" in accordance with the Openness Promotes Effectiveness in Our National (OPEN) Government Act of 2007 (December 31, 2007). The term "news" is defined within the term "representative of the news media."

**DATES:** With the exception of § 2.3(k) and (r), this rule is effective May 14, 2009. Section 2.3(k) and (r) have been revised consistent with the OPEN Government Act of 2007 and are effective May 29, 2009 without further action unless significant adverse comments are received by May 14, 2009. If significant adverse comments to § 2.3(k) and (r) comments are received, DOI will publish a timely withdrawal of these paragraphs in the Federal Register.

**ADDRESSES:** You may submit comments, identified by the number 1090-AA61, on the portions of this rule identified in Part II, Procedural Matters and Required

Documentation, that have not previously been published for review by any of the following methods:

—*Federal rulemaking portal:* <http://www.regulations.gov> [Follow the instructions for submitting comments]; or

—*Mail or hand delivery:* OCIO/DOI, 1849 C Street, NW., Room 7456-MIB, Washington, DC 20240.

**FOR FURTHER INFORMATION CONTACT:** Alexandra Mallus, Office of the Chief Information Officer, MS-7438, Main Interior Building, 1849 C Street, NW., Washington, DC 20240; Telephone (202) 208-5342. E-Mail: [Alexandra\\_Mallus@ios.doi.gov](mailto:Alexandra_Mallus@ios.doi.gov).

**SUPPLEMENTARY INFORMATION:****I. Background**

The Department of the Interior published a final rule in the *Federal Register* on October 21, 2002, revising its regulations implementing the FOIA, 43 CFR part 2. In this publication, the language used in § 2.21(d)(6), "How will the bureau respond to my request?" and the language used in § 2.29, "How long do I have to file an appeal?" were inconsistent with each other concerning the timeframe for filing an appeal. This rule clarifies the 2002 final rule by noting that appeals must be received by the FOIA Appeals Officer no later than 30 workdays from the date of the final response. Additionally, this rule clarifies that a requester's failure to include all correspondence between himself/herself and the bureau concerning his/her FOIA request will result in the Department's rejection of the appeal unless the FOIA Appeals Officer determines that good cause exists to accept the defective appeal.

This rule also changes § 2.22, "What happens if a bureau receives a request for records it does not have or did not create?" to eliminate paragraph (a)(1) of § 2.22, which has been construed by some courts to require bureaus that had received a FOIA request to refer the request to another bureau for a search of its records, regardless of whether the bureau that received the request had responsive records. The result of this change is that FOIA requesters must submit their requests in accordance with § 2.10, which requires that the FOIA requester specify which bureau's records are being sought or, at a minimum, specify when the FOIA requester is seeking the records of more than one bureau.

Consistent with EO 13392, this rule adds a new paragraph (c) to § 2.12, "When can I expect the response?" advising requesters that they may contact the bureau/office's FOIA

Requester Service Center and the FOIA Public Liaison concerning the status of their requests. Additionally, the language in §§ 2.3 and 2.14 regarding expedited processing has been amended to reflect the FOIA's statutory language; therefore, the term "exceptional need" has been replaced with "compelling need," and paragraph (a)(3) in § 2.14 pertaining to "due process rights" has been removed.

This rule also revises the language in § 2.26, "Does the bureau provide multitrack processing of FOIA requests?" to make the use of multitrack processing mandatory for all bureaus and offices within the Department and remind the bureaus of the statutory requirement of due diligence.

Appendix A to part 2, Department of the Interior FOIA and Public Affairs Contacts and Reading Rooms, has been updated to include current contact information for DOI's FOIA and Public Affairs/Office of Communications Contacts and its reading rooms (Headquarters) and to delete the FOIA contacts and reading rooms for the field offices. In the future, bureaus/offices will maintain information pertaining to the field offices on their FOIA Web sites to ensure that their contact information is accurate and current.

Finally, this final rule revises the definition of the terms "representative of the news media" and "freelance journalist" (§ 2.3(k) and § 2.3(r)) in accordance with the OPEN Government Act of 2007 (December 31, 2007).

**II. Procedural Matters and Required Documentation***Administrative Procedure Act*

On October 25, 2007, DOI published a proposed rule that revised its existing regulations under the FOIA. See 72 FR 60611, October 25, 2007. Interested persons were afforded an opportunity to participate in the rulemaking through submission of written comments on the proposed rule. The Department did not receive any comments from the public in response to its proposed rule. Accordingly, those provisions previously published are now final. Additionally, the Department is publishing, as a direct final rule three additional administrative updates: (1) The contact information in Appendix A to part 2, Department of the Interior FOIA and Public Affairs Contacts and Reading Rooms; (2) incorporation of the definitions for the terms "representative of the news media" and "freelance journalist" in accordance with the OPEN Government Act of 2007; and (3) one technical change to § 2.29(a), which

clarifies the time appellants have to file an appeal.

*Executive Order 12866—Regulatory Planning and Review*

This document is not a significant rule and the Office of Management and Budget has not reviewed this rule under Executive Order 12866. We have made the assessments required by Executive Order 12866 and have determined that this rule will not:

- (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments, or communities;
- (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
- (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients; or
- (4) Raise novel legal or policy issues.

*Regulatory Flexibility Act*

DOI certifies that this regulation will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 606(b)). Under the FOIA, agencies may recover only the direct costs of searching for, reviewing, and duplicating the records processed for requesters. Thus, fees assessed by DOI are nominal.

*Small Business Regulatory Enforcement Fairness Act*

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule will not result in an annual effect on the economy of more than \$100 million per year; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based companies to compete with foreign-based enterprises. It deals strictly with implementation of the FOIA within DOI.

*Unfunded Mandates Reform Act*

This rule does not impose an unfunded mandate on State, local, or tribal governments, or the private sector of more than \$100 million per year. The rule does not have a significant or unique effect on State, local, or tribal governments, or the private sector.

Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*).

*Executive Order 12630—Takings*

In accordance with Executive Order 12630, this rule does not have any takings implications. It deals strictly with implementation of the FOIA within DOI. Therefore, a takings assessment is not required.

*Executive Order 13132—Federalism*

In accordance with Executive Order 13132, this rule does not have Federalism implications as it deals strictly with implementation of the FOIA within DOI. Therefore, a Federalism assessment is not required.

*Executive Order 12988—Civil Justice Reform*

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this rule does not unduly burden the judicial system and the requirements of sections 3(a) and 3(b)(2) of the Order.

*Paperwork Reduction Act*

This rule does not contain any information collection requirements for which OMB approval under the Paperwork Reduction Act (44 U.S.C. 3501–3520) is required.

*National Environmental Policy Act*

This rule does not constitute a major Federal action significantly affecting the quality of the human environment. A detailed statement under the National Environmental Policy Act (42 U.S.C. 4321–4347) of 1969 is not required.

*Executive Order 13211—Regulations That Significantly Affect the Supply, Distribution, or Use of Energy*

Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. As this rule is not expected to significantly affect energy supplies, distribution, or use, this action is not a significant energy action and no Statement of Energy Effects is required.

*Clarity of This Regulation*

Executive Order 12866 requires each agency to write regulations that are easy to understand. We invite your comments on how to make this rule easier to understand, including answers to such questions such as the following:

- (1) Are the requirements in the rule clearly stated?
- (2) Does the rule contain technical language or jargon that interferes with its clarity?

(3) Does the format of the rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity?

(4) Would the rule be easier to understand if it were divided into more (but shorter) sections? (A "section" appears in bold type and is preceded by the symbol "\$" and a numbered heading; for example, "\$2.7 What do I need to know before filing a FOIA request?")

(5) Is the description of the rule in the SUPPLEMENTARY INFORMATION section of the preamble helpful in understanding the proposed rule? What else could we do to make the rule easier to understand?

Send a copy of any comments that concern how we could make this rule easier to understand to: Office of Regulatory Affairs, Department of the Interior, 1849 C Street, NW, MS-7229-MIB, Washington, DC 20240.

**List of Subjects in 43 CFR Part 2**

Administrative practice and procedure, Classified information, Courts, Freedom of information, Government employees, Privacy.

Dated: February 26, 2009.

**Pamela K. Haze,**  
*Acting Assistant Secretary, Policy,  
Management and Budget.*

■ For the reasons given in the preamble, we hereby amend part 2 of title 43 of the Code of Federal Regulations, as set forth below:

**PART 2—RECORDS AND TESTIMONY: FREEDOM OF INFORMATION ACT**

■ 1. The authority citation for part 2 continues to read as follows:

**Authority:** 5 U.S.C. 301, 552 and 552a; 31 U.S.C. 9701; and 43 U.S.C. 1460

**Subpart A—General Information**

■ 2. In § 2.3, revise paragraphs (i), (k), and (r) to read as follows:

**§ 2.3 What terms do I need to know?**

\* \* \* \* \*

(i) *Expedited processing* means giving a FOIA request priority, and processing it ahead of other requests pending in the bureau because a requester has shown a compelling need for the records (see § 2.14).

\* \* \* \* \*

(k) *Free-lance journalist* means an individual who is regarded as working for a news-media entity because he/she can demonstrate a solid basis for expecting publication through that entity, whether or not the journalist is actually employed by that entity. A publication contract would present a

solid basis for such an expectation; the Government may also consider the past publication record of the requester in making such a determination.

\* \* \* \* \*

(r) *Representative of the news media* means any person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience. The term "news" means information that is about current events or that would be of current interest to the public. Examples of news-media entities are newspapers, television or radio stations broadcasting to the public at large, and publishers of periodicals (but only if such entities qualify as disseminators of "news") who make their products available for purchase by or subscription by or free distribution to the general public. These examples are not all inclusive. As methods of news delivery evolve (for example, the adoption of the electronic dissemination of newspapers through telecommunication services), such alternative media will be considered to be news-media entities.

#### Subpart C—Requests for Records under the FOIA

■ 3. In § 2.12, add a new paragraph (c) to read as follows:

##### § 2.12 When can I get the response?

\* \* \* \* \*

(c) *Determining the status of your request.* To determine the status of your request, you should call, fax, or email the point of contact provided in the bureau/office's acknowledgment letter to you, referencing the FOIA control number assigned to your request. You may also contact the appropriate FOIA Requester Service Center. If you are dissatisfied with the FOIA Requester Service Center's response, you may contact the bureau/office's FOIA Public Liaison to resolve the issue. (The relevant names and telephone numbers are listed at <http://www.doi.gov/foia/liaison.htm>).

■ 4. In § 2.14, revise paragraph (a) to read as follows:

##### § 2.14 When can I get expedited processing?

(a) A bureau will provide expedited processing when you request it if you demonstrate to the satisfaction of the bureau that there is a compelling need for the records. The following circumstances demonstrate a compelling need:

(1) Where failure to expedite the request could reasonably be expected to

pose an imminent threat to the life or physical safety of an individual; or

(2) An urgency to inform the public about an actual or alleged Federal Government activity if the request is made by a person primarily engaged in disseminating information. In most situations, a person primarily engaged in disseminating information will be a representative of the news media. The requested information must be the type of information which has particular value that will be lost if not disseminated quickly, and ordinarily refers to a breaking news story of general public interest. Therefore, information of historical interest only, or information sought for litigation or commercial activities, would not qualify, nor would a news media deadline unrelated to breaking news.

\* \* \* \* \*

■ 5. In § 2.21, revise paragraph (d)(6) to read as follows:

##### § 2.21 How will the bureau respond to my request?

\* \* \* \* \*

(d) \* \* \*

(6) A statement that the denial may be appealed to the FOIA Appeals Officer (see Appendix A to this Part), in accordance with the requirements in § 2.29.

\* \* \* \* \*

■ 6. In § 2.22, revise paragraph (a) to read as follows:

##### § 2.22 What happens if a bureau receives a request for records it does not have or did not create?

(a) *Consultations/referrals within DOI.* If a bureau (other than the Office of Inspector General) receives a request for records in its possession that another bureau created or is substantially concerned with, it will consult with the other bureau before deciding whether to release or withhold the records. Alternatively, the bureau may refer the request, along with the records, to that bureau for direct response. The bureau that received the request will notify you of the referral in writing, along with the name of a contact in the other bureau(s) to which the referral was made. A referral does not restart the statutory time limit for responding to your request.

\* \* \* \* \*

■ 7. Revise § 2.26 to read as follows:

##### § 2.26 Does the bureau provide multitrack processing of FOIA requests?

(a) All bureaus will use three processing tracks to distinguish between simple, normal, and complex requests based on the amount of time needed to

process the request. FOIA requests will be placed in one of the following tracks:

- (1) Simple: 1–5 workdays;
- (2) Normal: 20 workdays; or
- (3) Complex: Over 20 workdays.

(b) Bureaus will exercise due diligence in processing requests in accordance with the requirements of the FOIA. Requesters should assume, unless notified by the bureau, that their request is in the "Normal" track.

(c) A bureau should, if possible, give requesters in its "Complex" track the opportunity to limit the scope of their request in order to qualify for faster processing. A bureau doing so will contact the requester by telephone (which should be promptly followed up by a written communication) or in writing, whichever is more efficient in each case.

(d) See the Department's FOIA home page at <http://www.doi.gov/foia/policy.html> for details.

#### Subpart D—FOIA Appeals

■ 8. Revise § 2.29 to read as follows:

##### § 2.29 How long do I have to file an appeal?

(a) Appeals covered by § 2.28(a)(1), (2), (4), and (5). Your FOIA appeal must be received by the FOIA Appeals Officer no later than 30 workdays from the date of the final response.

(b) Appeals covered by § 2.28(a)(3). You may file an appeal any time after the time limit for responding to your request has passed.

(c) Appeals covered by § 2.28(a)(6). Your FOIA appeal must be received by the FOIA Appeals Officer no later than 30 workdays from the date of the letter denying the fee waiver.

(d) Appeals covered by § 2.28(a)(7). You should file an appeal as soon as possible.

(e) Appeals arriving or delivered after 5 p.m. E.T., Monday through Friday, will be deemed received on the next workday.

■ 9. In § 2.30, revise paragraph (b) to read as follows:

##### § 2.30 How do I file an appeal?

\* \* \* \* \*

(b) You must include with your appeal copies of all correspondence between you and the bureau concerning your FOIA request, including your request and the bureau's response (if there is one). Failure to include with your appeal all correspondence between you and the bureau will result in the Department's rejection of your appeal, unless the FOIA Appeals Officer determines, in the FOIA Appeal Officer's sole discretion, that good cause

exists to accept the defective appeal. The time limits for responding to your appeal will not begin to run until the documents are received.

\* \* \* \* \*

■ 10. Appendix A to part 2 is revised to read as follows:

**Appendix A to Part 2—Department of the Interior FOIA and Public Affairs Contacts, and Reading Rooms**

#### Departmental

Departmental FOIA Officer Senior FOIA Program Officer "Policy Only-No Requests" MS-7438-MIB 1849 C St., NW. Washington, DC 20240 Telephone No. (202) 208-5342 (202) 208-5412 Fax No. (202) 208-6867, (202) 501-2622	Departmental FOIA/Privacy Act Appeals Officer MS-6556-MIB 1849 C St., NW. Washington, DC 20240 Telephone No. (202) 208-5339 Fax No. (202) 208-6677	Departmental Privacy Officer MS-7438-MIB 1849 C St., NW. Washington, DC 20240 Telephone No. (202) 208-3909 Fax No. (202) 208-6867
Public Affairs Office Office of Communications MS-6013, MIB 1849 C St., NW. Washington, DC 20240 Telephone No. (202) 208-6416 Fax No. (202) 208-5133	Reading Room—DOI's Library MIB (C Street Entrance) 1849 C St., NW. Washington, DC 20240 Telephone No. (202) 208-5815 Fax No. (202) 208-6773	

#### Office of the Secretary

FOIA Officer MS-116, SIB 1951 Constitution Ave., NW. Washington, DC 20240 Telephone No. (202) 565-1076 Fax No. (202) 219-2374	Public Affairs Office Office of Communications MS-6013, MIB 1849 C St., NW. Washington, DC 20240 Telephone No. (202) 208-6416 Fax No. (202) 208-5133	Reading Room—DOI's Library MIB (C Street Entrance) 1849 C St., NW. Washington, DC 20240 Telephone No. (202) 208-5815 Fax No. (202) 208-6773
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#### Office of Inspector General

FOIA Officer MS-4428, MIB 1849 C St., NW. Washington, DC 20240 Telephone No. (703) 487-5436 Fax No. (703) 487-5406	Public Affairs Office MS-4428, MIB 1849 C St., NW. Washington, DC 20240 Telephone No. (202) 513-0326 Fax No. (202) 219-3856	Reading Room Room 4428, MIB 1849 C St., NW. Washington, DC 20240 Telephone No. (703) 487-5443 Fax No. (703) 487-5406
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#### Office of the Solicitor (SOL) Headquarters

FOIA Officer MS-6556, MIB 1849 C St., NW. Washington, DC 20240 Telephone No. (202) 208-6221 Fax No. (202) 208-5206	Public Affairs Office Office of Communications MS-6013, MIB 1849 C St., NW. Washington, DC 20240 Telephone No. (202) 208-6416 Fax No. (202) 208-3231	Reading Room Room 2328, MIB 1849 C St., NW. Washington, DC 20240 Telephone No. (202) 208-6505 Fax No. (202) 208-5206
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#### Fish & Wildlife Service (FWS) Headquarters

FOIA Officer Arlington Square, Room 380 4401 North Fairfax Dr. Arlington, VA 22203 Telephone No. (703) 358-2504 Fax No. (703) 358-2251	Public Affairs Office Arlington Square, MS-330 4401 North Fairfax Dr. Arlington, VA 22203 Telephone No. (703) 358-2220 Fax No. (703) 358-1930	Reading Room Arlington Square, MS-380 4401 North Fairfax Dr. Arlington, VA 22203 Telephone No. (703) 358-2504 Fax No. (703) 358-2251
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#### National Park Service (NPS) Headquarters

FOIA Officer Office of the CIO Org Code 2550 1849 C St., NW. Washington, DC 20240 Telephone No. (202) 354-1925 Fax No. (202) 371-5584	Public Affairs Office P.O. Box 37127 Washington, DC 20013-7127 Telephone No. (202) 208-6843 Fax No. (202) 219-0910	Reading Room Contact: NPS FOIA Officer 1201 Eye St., NW. 8th Floor Washington, DC 20005 Telephone No. (202) 354-1925 Fax No. (202) 371-5584
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**Bureau of Land Management (BLM) Headquarters**

FOIA Officer MS-WO-560 1620 L St., NW., Room 750 Washington, DC 20240 Telephone No. (202) 452-5013 Fax No. (202) 452-5002	Public Affairs Office MS-WO-610 1620 L St., NW., Room 406 Washington, DC 20240 Telephone No. (202) 452-5125 Fax No. (202) 452-5124	Reading Room 1620 L St., NW.—Room 750 Washington, DC 20240 Telephone No. (202) 452-5193 Fax No. (202) 452-0395
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**Minerals Management Service (MMS) Headquarters**

FOIA Officer 381 Elden St. MS-2200 Herndon, VA 20170-4817 Telephone No. (703) 787-1689 Fax No. (703) 787-1207	Public Affairs Office Office of Communications 1849 C St., NW., MS-4230 Washington, DC 20240 Telephone No. (202) 208-3985 Fax No. (202) 208-3968	Reading Room Public Information Office 1201 Elmwood Park Blvd. New Orleans, LA 70123-2394 Telephone No. (800) 200-GULF Fax No. (504) 736-2620
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**Office of Surface Mining (OSM) Headquarters**

FOIA Officer MS-130, SIB 1951 Constitution Ave., NW. Washington, DC 20240 Telephone No. (202) 208-2961 Fax No. (202) 219-3092	Office of Communications MS-262, SIB 1951 Constitution Ave., NW. Washington, DC 20240 Telephone No. (202) 208-2565 Fax No. (202) 501-0549	Reading Room Contact: OSM FOIA Officer Room 263, SIB 1951 Constitution Ave., NW. Washington, DC 20240 Telephone No. (202) 208-2961 Fax No. (202) 501-4734
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**U.S. Geological Survey (USGS) Headquarters**

FOIA Officer 12201 Sunrise Valley Dr., MS-807 Reston, VA 20192 Telephone No. (703) 648-7158 Fax No. (703) 648-6853	Office of Communications 12201 Sunrise Valley Dr., MS-119 Reston, VA 20192 Telephone No. (703) 648-4460 Fax No. (703) 648-4466	Reading Room USGS Library 12201 Sunrise Valley Dr. Reston, VA 20192 Telephone No. (703) 648-4302 Fax No. (703) 648-6373
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**Bureau of Reclamation (BOR) Headquarters**

FOIA Officer P.O. Box 25007, 84-21300 Denver, CO 80225-0007 Telephone No. (303) 445-2048 Fax No. (303) 445-6575	Public Affairs Office P.O. Box 25007, 82-40000 Denver, CO 80225-0007 Telephone No. (303) 236-7000 Fax No. (303) 236-9235	Reading Room Reclamation Library P.O. Box 25007, 84-27960 Denver, CO 80225-0007 Telephone No. (303) 445-2072 Fax No. (303) 445-6303
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**Bureau of Indian Affairs (BIA) Headquarters**

FOIA Officer MS-3071, MIB 1849 C St., NW. Washington, DC 20240 Telephone No. (202) 208-4542 Fax No. (202) 208-6597	Public Affairs Office MS-3658, MIB 1849 C St., NW. Washington, DC 20240 Telephone No. (202) 208-3710 Fax No. (202) 501-1516	Reading Room Room 3071, MIB 1849 C St., NW. Washington, DC 20240 Telephone No. (202) 513-0883 Fax No. (202) 208-6597
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Note: For more information on FOIA, including the most current listing of FOIA Contacts and reading rooms, visit DOI's FOIA Web site at <http://www.doi.gov/foia/>. Henceforth, contact information will be maintained and updated on DOI's FOIA Web site. If you do not have access to the Web, please contact the appropriate bureau FOIA Officer or the Departmental FOIA Office.

Dated: April 6, 2009.

[FR Doc. E9-8206 Filed 4-13-09; 8:45 am]

BILLING CODE 4310-RK-P

**DEPARTMENT OF HOMELAND SECURITY****Federal Emergency Management Agency****44 CFR Part 64**

[Docket ID FEMA-2008-0020; Internal Agency Docket No. FEMA-8069]

**Suspension of Community Eligibility**

AGENCY: Federal Emergency Management Agency, DHS.  
ACTION: Final rule.

SUMMARY: This rule identifies communities, where the sale of flood

insurance has been authorized under the National Flood Insurance Program (NFIP), that are scheduled for suspension on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If the Federal Emergency Management Agency (FEMA) receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will not occur and a notice of this will be provided by publication in the Federal Register on a subsequent date.

## §2.27

(3) Complex: Over 20 workdays.

(b) Bureaus will exercise due diligence in processing requests in accordance with the requirements of the FOIA. Requesters should assume, unless notified by the bureau, that their request is in the "Normal" track.

(c) A bureau should, if possible, give requesters in its "Complex" track the opportunity to limit the scope of their request in order to qualify for faster processing. A bureau doing so will contact the requester by telephone (which should be promptly followed up by a written communication) or in writing, whichever is more efficient in each case.

(d) See the Department's FOIA home page at <http://www.doi.gov/foia/policy.html> for details.

[74 FR 17092, Apr. 14, 2009]

**§2.27 How will a bureau handle a request for information that is contained in a Privacy Act system of records? (See DOI's Privacy Act regulations (Subpart G of this part) for additional information.)**

(a) When you request information pertaining to yourself that is contained in a Privacy Act system of records applicable to you (*i.e.*, the information contained in the system of records is retrieved by the bureau using your name or other personal identifier), the request will be processed under both the FOIA and the Privacy Act. If you request information about yourself, you must submit certain identifying information, usually an original signature (see the appropriate Privacy Act system notice and, subpart G of this part) before the bureau will process your request. (Note: If you request information about yourself that is not covered by the Privacy Act, *e.g.*, the information may be filed under another subject, such as an organization, activity, event, or an investigation not retrievable by a name or personal identifier, the request will be treated only as a FOIA request.)

(b) The Privacy Act never prohibits disclosure of material that the FOIA requires to be released. Both a Privacy Act and a FOIA exemption must apply to withhold information from you if the information you seek is contained

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in a Privacy Act system of records applicable to you.

(c) Sometimes a request for Privacy Act information is submitted by a "third party" (an individual other than the person who is the subject of the Privacy Act record). If you request Privacy Act information about another individual, the material will not be disclosed without prior written approval by that individual unless—

(1) The release is provided for under one of the Privacy Act conditions of disclosure (5 U.S.C. 552a(b)), one of which is that Privacy Act information is releasable if it is required to be released under the FOIA, or

(2) In most circumstances, if the individual is deceased. See §2.8(d)(4).

(d) In handling a request covered by paragraph (a) of this section, the fee provisions and time limits under the FOIA will apply, except that with regard to information that is subject to the Privacy Act, the bureau will charge only for duplication and not for search and review time (see appendix C to this part). There will be no charge if the fee for processing the request is \$30 or less.

## Subpart D—FOIA Appeals

SOURCE: 67 FR 64530, Oct. 21, 2002, unless otherwise noted.

### §2.28 When may I file an appeal?

(a) You may file an appeal when:

(1) Records or parts of records have been withheld;

(2) The bureau informs you that you have not adequately described the records you are seeking, or that it does not possess responsive records and you have reason to believe it does or you question the adequacy of the bureau's search for responsive records;

(3) A decision has not been made on your request within the time limits provided in §2.12;

(4) The bureau did not address all aspects of your request for records;

(5) You believe there is a procedural deficiency (*e.g.*, fees are improperly calculated);

(6) A fee waiver has been denied; or

(7) A request for expedited processing has been denied or not responded to on time. (Special procedures apply to this type of appeal (see §§2.14, 2.29(c), and

## Office of the Secretary, Interior

## § 2.31

2.32(b)). An appeal of this type relates only to the request for expedited processing and does not constitute an appeal of your underlying request for records.

(b) Before filing an appeal, you may wish to communicate with the contact person listed in the FOIA response or the bureau's FOIA Officer to see if the issue can be resolved informally. Informal resolution of your concerns may be appropriate where the bureau has not responded to your request or where you believe the search conducted was not adequate. In this latter instance, you may be able to provide additional information that may assist the bureau in locating records. However, if you wish to file an appeal, it must be received by the FOIA Appeals Officer within the time limits in § 2.29.

### § 2.29 How long do I have to file an appeal?

(a) Appeals covered by § 2.28(a)(1), (2), (4), and (5). Your FOIA appeal must be received by the FOIA Appeals Officer no later than 30 workdays from the date of the final response.

(b) Appeals covered by § 2.28(a)(3). You may file an appeal any time after the time limit for responding to your request has passed.

(c) Appeals covered by § 2.28(a)(6). Your FOIA appeal must be received by the FOIA Appeals Officer no later than 30 workdays from the date of the letter denying the fee waiver.

(d) Appeals covered by § 2.28(a)(7). You should file an appeal as soon as possible.

(e) Appeals arriving or delivered after 5 p.m. E.T., Monday through Friday, will be deemed received on the next workday.

[74 FR 17092, Apr. 14, 2009]

### § 2.30 How do I file an appeal?

(a) You must submit your appeal in writing, i.e., by mail, fax or e-mail, to the FOIA Appeals Officer, U.S. Department of the Interior (see appendix a for the address). Your appeal must include the information specified in paragraph (b) of this section. Failure to send your appeal directly to the FOIA Appeals Officer may result in a delay in processing.

(b) You must include with your appeal copies of all correspondence between you and the bureau concerning your FOIA request, including your request and the bureau's response (if there is one). Failure to include with your appeal all correspondence between you and the bureau will result in the Department's rejection of your appeal, unless the FOIA Appeals Officer determines, in the FOIA Appeal Officer's sole discretion, that good cause exists to accept the defective appeal. The time limits for responding to your appeal will not begin to run until the documents are received.

(c) You also should include in as much detail as possible any reason(s) why you believe the bureau's response was in error.

(d) Include your name and daytime telephone number (or the name and telephone number of an appropriate contact), e-mail address and fax number (if available), in case DOI needs additional information or clarification of your appeal.

(e) If you file an appeal concerning a fee waiver denial or a denial of expedited processing, you should, in addition to complying with paragraph (b) of this section, demonstrate fully how the criteria in § 2.19(b) (see appendix D) or § 2.14(a) are met. You also should state in as much detail as possible why you believe the initial decision was incorrect.

(f) All communications concerning your appeal should be clearly marked with the words: "FREEDOM OF INFORMATION APPEAL."

[67 FR 64530, Oct. 21, 2002, as amended at 74 FR 17092, Apr. 14, 2009]

### § 2.31 How will DOI respond to my appeal?

(a) Appeals will be decided by the FOIA Appeals Officer. When necessary, the FOIA Appeals Officer will consult other appropriate offices, including the Office of the Solicitor (in the case of all denials of information and fee waivers, and other technical issues as necessary).

(b) The final decision on an appeal will be in writing and will state the basis for DOI's decision as follows:

(1) *Decision to release or withhold records.* (i) If the FOIA Appeals Officer

## § 2.32

decides to release the withheld records or portions thereof, he/she will make the records available or instruct the appropriate bureau to make them available as soon as possible.

(ii) If the FOIA Appeals Officer decides to uphold in whole or part the denial of a request for records, he/she will advise you of your right to obtain judicial review.

(2) *Non-possession of records.* If the FOIA Appeals Officer decides that the requested records exist, the bureau that has the records will issue a response to you promptly and the FOIA Appeals Officer will close the file on your appeal. If the FOIA Appeals Officer decides that the requested records cannot be located or do not exist, he/she will advise you of your right to treat the decision as a denial and seek judicial review.

(3) *Non-response to a FOIA request.* If a bureau has not issued an appropriate response to your FOIA request within the 20-workday statutory time limit, the FOIA Appeals Officer will direct the bureau to issue a response directly to you as soon as possible. If the bureau responds to your request within 20-workdays after receipt of the appeal, the FOIA Appeals Officer will close the file on your appeal. Otherwise, the FOIA Appeals Officer will advise you that you may treat the lack of a response by the bureau as a denial of your appeal and seek judicial review.

(4) *Incomplete response to a FOIA request.* If a bureau has not issued a complete response to your FOIA request, the FOIA Appeals Officer will direct the bureau to issue a complete response directly to you as soon as possible, and provide you with the name and telephone number of a contact person. The FOIA Appeals Officer will close your FOIA appeal and advise you that you may treat the incomplete response by the bureau as a denial of your appeal and seek judicial review.

(5) *Procedural deficiencies.* If the FOIA Appeals Officer decides that the bureau was in error, he/she will instruct the bureau to correct the error and advise you accordingly. If the FOIA Appeals Officer decides that the bureau acted properly, he/she will deny your appeal and advise you of your right to seek judicial review.

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(6) *Fee waiver denials.* If the decision is to grant your request for a fee waiver, the FOIA Appeals Officer will advise the appropriate bureau of the Department's decision and instruct the bureau to proceed with processing the request or to refund any monies you have paid. If the decision is to deny the fee waiver request, the Department will advise you of your right to seek judicial review. You also should contact the bureau office to make further arrangements to process your request if you still wish to obtain the records.

(7) *Denial of expedited processing.* If the FOIA Appeals Officer decides to grant expedited processing, he/she will direct the bureau to process your request as soon as practicable. If your request for expedited processing is denied on appeal, the FOIA Appeals Officer will advise you of your right to seek judicial review of the denial of expedited processing.

### § 2.32 How long does DOI have to respond to my appeal?

(a) The statutory time limit for responding to an appeal is 20 workdays after receipt of an appeal meeting the requirements of § 2.30.

(b) If you request expedited processing of your appeal, you must demonstrate to the Department's satisfaction that the appeal meets one of the criteria under § 2.14(a). The FOIA Appeals Officer will advise you whether the Department will grant expedited processing within 10 calendar days of its receipt of your appeal. If the FOIA Appeals Officer decides to grant expedited processing, he/she will give your appeal priority and process it ahead of other pending appeals.

(c) If you have not received a decision on your appeal within 20 workdays, you have the right to seek review in a District Court of the United States (see 5 U.S.C. 552(a)(4) and (6)). In the event that the Department is unable to reach a decision within the given time limits, the FOIA Appeals Officer will notify you of the reason for the delay and the right to seek judicial review.