



United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240



May 11, 2005

Mr. Darrell Geist
Buffalo Field Campaign
P.O. Box 7941
Missoula, Montana 59807

Dear Mr. Geist:

On April 28, 2005, on behalf of the Buffalo Field Campaign, you filed a Freedom of Information Act (FOIA) request, in which you requested:

“a copy of the following agency records on the Royal Teton Ranch and Devil’s Slide land protection agreements reached in 1999:

- 1) The time period for this request is for any record beginning January 1, 1998 to date.
- 2) This records search is inclusive of the Secretary of Interior, Deputy Secretary of the Interior, Office of the Secretary for Fish Wildlife & Parks, and any staff or assistant staff or deputy staff associated with the offices above, or any other offices that assisted the Department of Interior in the Royal Teton Ranch and Devil’s Slide land protection agreements.
- 3) This records search should include at minimum the offices of former Secretary of Interior Bruce Babbitt and his successors, former Assistant Secretary for Fish Wildlife and Parks Donald J. Barry and his successors, former Counselor to Assistant Secretary Karen Kovacs and her successors.
- 4) The search for agency records are inclusive of any notes, emails, faxes, briefing papers, maps, photos, news articles and other agency records as that term is defined under the Freedom of Information Act.”

Your request was received in the Office of the Secretary FOIA office on April 28, 2005, and assigned control number OS-2005-00358. Please cite this number in any future correspondence or communications with the Office of the Secretary regarding your request.

With respect to your request:

1. Because we will need to search for and collect the requested records from multiple offices and consult with one or more bureaus of the Department having substantial subject-matter interest in the request, the Office of the Secretary FOIA office is taking a 10-working-day time extension, under 43 CFR 2.13 in order to properly process your request.
2. For the reasons stated in paragraph 1, above, we are placing your request under the "Complex" processing track. See 43 CFR 2.26.
3. We have classed your request as an "other-use request." As an "other-use requester," you are entitled to receive 2 hours search time and 100 pages of duplication of responsive records without charge before being asked to pay for document search and reproduction. As a matter of policy, however, the Department of the Interior does not bill requesters for FOIA fees incurred in processing requests when their fees do not exceed \$30.00, because the cost of collection would be greater than the fee collected. (See 43 CFR 2.18(a))
4. You have asked for a waiver of all FOIA processing fees. The Department of the Interior's regulations state that "Bureaus will waive fees (in whole or part) if disclosure of all or part of the information is in the public interest because its release (1) Is likely to contribute significantly to public understanding of the operations or activities of the Government and (2) Is not primarily in the commercial interest of the requester." 43C.F.R. 2.19(b). However, your request does not contain sufficient evidence to satisfy these criteria.

The Department considers the following factors when determining if disclosure of information is likely to contribute significantly to public understanding of the operations or activities of the Government:

- a. Does the record concern the operations or activities of the Government?
- b. If a record concerns the operations or activities of the Government, is its disclosure likely to contribute to public understanding of these operations and activities? Is the focus of the requester on contribution to public understanding of the operations or activities of the Government?
- c. If there is likely to be a contribution to public understanding, will that contribution be significant? A contribution to public understanding will be significant if the information disclosed is new,

clearly supports public oversight of Department operations, including the quality of Department activities and the effect of policy and regulations on public health and safety, or otherwise confirms or clarifies data on past or present operations of the Department.

With respect to your request for a fee waiver, vis-a-vis the Department's criteria for granting a fee waiver:

a. Does the record concern the operations or activities of the Government?

Records concern the operations or activities of the Government if they relate to or will illuminate the manner in which the Department or a bureau is carrying out identifiable operations or activities or the manner in which an operation or activity affects the public. The connection between the records and the operations and activities to which they are said to relate should be clear and direct, not remote and attenuated.

Your request meets this base requirement for granting a fee waiver because the documents that you request concern the operations or activities of the Government, insofar as they deal with the Department's land conservation efforts.

b. If a record concerns the operations or activities of the Government, is its disclosure likely to contribute to public understanding of these operations and activities? Is the focus of the requester on contribution to public understanding of the operations or activities of the Government?

The likelihood of a contribution to public understanding will depend on consideration of the content of the records, the identity of the requester, and the interrelationship between the two. For the purpose of releasing a document, the identity of the requester is generally irrelevant. However, it is an important factor in determining whether a fee waiver is appropriate. We consider the following factors when determining whether a fee waiver is appropriate: Is there a logical connection between the content of the requested record and the operations or activities in which the requester is interested? Are the disclosable contents of the record meaningfully informative on the operations or activities? Is the focus of the requester on contribution to public understanding, rather than on the individual understanding of the requester or a narrow segment of interested persons? Does the requester have expertise in the subject area and the ability and

intention to disseminate the information to the general public or otherwise use the information in a manner that will contribute to public understanding of Government operations or activities? Is the requested information sought by the requester because it may be informative on Government operations or activities or because of the intrinsic value of the information independent of the light that it may shed on Government operations or activities?

Your request fails to meet this second requirement for granting a fee waiver.

Irrespective of whether your organization has the ability and intention to disseminate the information to the general public, a subject on which we will not opine, the records you request, do not, to our satisfaction, contribute to public understanding of Government operations or activities. In your letter you assert that “very little information is readily accessible to the public concerning land use and land conservation agreements impacting Yellowstone bison habitat.” However, the Royal Teton Ranch and Devil’s Slide land protection agreements, which occurred over five years ago, were the subject of an Environmental Impact Statement issued in November 2000, followed by the inter-agency members issuing their Record of Decision in December 2000, as well as being the subject of an extensive GAO report entitled “Wildlife Management, Negotiations on a Long-Term Plan for Managing Yellowstone Bison Still Ongoing.”¹ Clearly, the subject of your FOIA request is a part of the public record. You fail to establish how the release of information currently in the public domain will contribute to the public’s understanding of the operations or activities of the Government.

c. If there is likely to be a contribution to public understanding, will that contribution be significant?

A contribution to public understanding will be significant if the information disclosed is new, clearly supports public oversight of Department operations, including the quality of Department activities and the effect of policy and regulations on public health and safety, or otherwise confirms or clarifies data on past or present operations of the Department. A contribution will not be significant if disclosure will not have a positive impact on the level of public understanding of the operations or activities involved that existed prior to the disclosure. In particular, a significant contribution is not likely to arise from disclosure of information already in

¹ Wildlife Management, Negotiations on a Long-Term Plan for Managing Yellowstone Bison Still Ongoing, GAO, November 1999 (found at <http://www.gao.gov/new.items/rc00007.pdf>)

the public domain because it has, for example, previously been published or routinely available to the general public in a public reading room.

Because it is not likely, for the reasons discussed above, that release to you of the requested records will make any contribution to public understanding of the operations or activities of the Government, we cannot find that a significant contribution to public understanding would occur.

Consequently, we must advise you that your request for a fee waiver is denied.

Robin Friedman, Attorney-Advisor with the Office of the Solicitor, was consulted in reaching this decision. Sue Ellen Sloca, Office of the Secretary FOIA Officer, is responsible for making this decision.

5. If you believe that the decision to deny your request for a fee waiver is incorrect, you may file an FOIA appeal by writing to the FOIA Appeals Officer, U.S. Department of the Interior, 1849 C Street, N.W., Mail Stop 7456, MIB, Washington, D.C. 20240. Your appeal letter must be received no later than 30 calendar days (excluding Saturdays, Sundays and legal holidays) after the date of our response (this letter). Your appeal letter must be marked, both on its envelope and at the top of its first page, with the legend "FREEDOM OF INFORMATION APPEAL." Your appeal letter must be accompanied by a copy of your original FOIA request (a copy of which is enclosed with our response, for your convenience,) and a copy of this letter, along with a brief explanation of why you believe that this decision is in error.
6. The Department of the Interior's FOIA regulations state that it will not begin to process a request until all fee issues are resolved. See 43 CFR § 2.8(b), 2.12(b), and 2.18(d). Insofar as you have not agreed, in writing, to pay any of the costs that will be incurred in the processing of your request, we cannot process it beyond your entitlements. At this point, you may specify an amount up to which you are willing to pay to have your request processed. The Department will process your request to that fee level, provide you with the releasable documents, and bill you for their cost. You then may indicate your willingness to pay additional fees, and the Department will continue to process your request accordingly.
7. You have asked for copies of agency records. According to our regulations, you may choose the form or format of disclosure for records that you request under the FOIA. (43 CFR 2.9) Please be advised that unless you specify otherwise, the Office of the Secretary will provide

copies of responsive records in electronic format, as scanned images (in TIF format) on a CD ROM disk, unless the number of responsive records is less than 50 pages.

8. Given the nature of the records you requested, your request has been forwarded to the appropriate offices within the Office of the Secretary and the Assistant Secretary for Fish, Wildlife and Parks for a search of its files responsive to your request. You may expect to hear back from us shortly with respect to the outcome of these file searches.

In the interim, if you have any questions regarding the status of your request within the Office of the Secretary, you may contact Lizzette Katilius by phone at (202) 565-1109, by fax at (202) 219-2374, by e-mail at osfoia@nbc.gov, or by mail at U.S. Department of the Interior, MS 1413 MiB, Washington, D.C. 20240. Within the Office of the Secretary, we are committed to providing you, our customer, with the highest quality of service possible.

Sincerely,



Sue Ellen Sloca
Office of the Secretary
FOIA Officer

Enclosure

PRIVACY ACT notice: *Before you choose to contact us, electronically, there are a few things you should know. The information you submit, including your electronic address, may be seen by various people. We will scan a copy of your request into our electronic OS FOIA administrative/image file. We will key the information that you provide to us into our electronic OS FOIA tracking file. We may share it with other individuals, both within and without the Department, involved in Freedom of Information Act administration. You may be contacted by any of these individuals. In other limited circumstances, including requests from Congress or private individuals, we may be required by law to disclose some of the information you submit. Also, e-mail is not necessarily secure against interception. If your communication is very sensitive, or includes personal information like your bank account, charge card, or social security number, you might want to send it by postal mail, instead.*