

U.S. House of Representatives
Committee on Natural Resources
Washington, DC 20515

March 13, 2019

The Honorable David Bernhardt
Acting Secretary
U.S. Department of the Interior
1849 C Street NW
Washington, D.C. 20240

Dear Acting Secretary Bernhardt:

The Committees are examining the implementation of the Freedom of Information Act (FOIA) at the Department of the Interior (DOI). We are concerned that instead of taking steps to increase processing and production of FOIA requests to meet the information needs of the American people, DOI is taking steps to reduce the output of information, politicize it, or both.

For example, on December 28, 2018—a Friday during peak holiday season in the middle of a government shutdown that included DOI—the agency announced a proposed rulemaking that made numerous changes to the FOIA process that could allow its bureaus to increase response times of certain requests, limit the numbers of responses by people or groups, and deny requests viewed as too burdensome. The guidance also consolidated various approval authorities in the FOIA process to political appointees—namely, the DOI Solicitor or Chief FOIA Officer.¹

Prior to that, it was reported that on September 6, 2018, the Fish and Wildlife Service's Ecological Services staff were issued guidance about how to evaluate whether information should be withheld or redacted using the exemption under FOIA for information that is deliberative, covered by the attorney-client privilege, or attorney work product. This guidance, which could reduce the amount of information released under FOIA, was leaked to the press.²

In addition, on May 24, 2018, DOI issued a memo requiring any document production from a FOIA request that includes a political appointee to be given to that appointee for review.³

The Committee on Natural Resources is the authorizing Committee for the Department of the Interior, including its component offices and bureaus, its personnel, and its operations, and the Committee on Oversight and Reform is the primary oversight Committee in the House. To assist the Committees' oversight of these issues, please provide the following documents and

¹ 83 FR 67175

² Tobias, Jimmy. "Revealed: US Moves to Keep Endangered Species Discussions Secret," *The Guardian* (Oct 18, 2018), <https://www.theguardian.com/us-news/2018/oct/18/trump-administration-us-endangered-species-discussions-secret>

³ Memo from FOIA Officer to Department of the Interior. *Department of the Interior*. May 24, 2018. Available at https://www.doi.gov/sites/doi.gov/files/uploads/awareness_process_memo_final.pdf

information by April 3, 2019, covering the timeframe from January 1, 2018, to the present unless otherwise indicated:

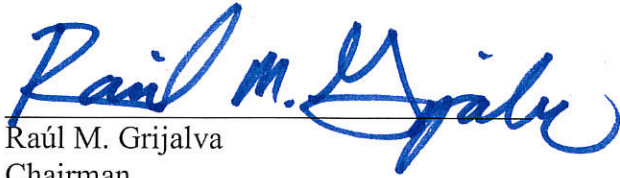
1. All formal and informal guidance, memoranda, or other direction given by DOI or any of its offices or bureaus since January 20, 2017 referring or relating to the processing of requests for information made pursuant to the Freedom of Information Act, including but not limited to records relating to:
 - a. Multi-track processing;
 - b. Application of FOIA Exemptions 4, 5, or 6;
 - c. Determinations on fee waiver requests;
 - d. Intrabureau or interbureau coordination at DOI and its bureaus, including requirements to forward requests to other bureaus under 43 C.F.R. § 2.4;
 - e. Searches for messages sent to mobile phones and instant messages sent via chat systems such as gChat, Google Hangouts, Skype, Signal, Messenger, WhatsApp, and Confide; and
 - f. Inquiries to requestors regarding whether they are “still interested” in responses when they are overdue;
2. Monthly performance data broken down by fee category for each DOI office or bureau, including:
 - a. Number of requests received;
 - b. Number of pending requests;
 - c. Number of pending requests for which the statutory time limit provided under FOIA for issuing a determination has been exceeded;
 - d. Number of requests processed;
 - e. Number of requests processed that are the subject of a lawsuit;
 - f. Number of requests denied and partially denied, and reasons for denial;
 - g. Number of requests that asked for fee waivers;
 - h. Number of requests for fee waivers that were denied, and reasons for denial;
 - i. Number of requests designated as “complex,” “simple,” and “normal;”
 - j. Number of FTEs dedicated to processing FOIA requests, categorized by total FTEs and subdivided by requests that are pending, appealed, and litigated; and
 - k. Median response time, beginning with the date on which the request was received by the agency and ending with the date on which a determination on the request was rendered to the requestor;
3. Documents sufficient to describe each stage of how the Department processes FOIA requests;
4. The median number of days FOIA requests spent at each stage of processing in each DOI office and bureau, organized by month in FY2016, FY2017, FY2018, and FY2019;

5. Budget for processing FOIA requests for FY2016, FY2017, FY2018, and FY2019;
6. Documents sufficient to show the amount of FOIA backlog, the rate at which the backlog is expected to decrease as a result of the regulation revisions referenced in 83 FR 67175, and the methodology used to derive the rate estimates;
7. Any formal and informal opinions, memoranda, written correspondence, or other direction from the Office of the Solicitor referring or relating to how FOIA revisions announced in 83 FR 67175 would or would not comply with FOIA;
8. Documents sufficient to show attempts to obtain, for the purposes of reducing the FOIA backlog, waivers from the hiring freeze imposed by an April 14, 2017, memo by James Cason titled, "Hiring Controls," the position descriptions for which these requested waivers were granted, and for positions that did not receive a waiver, the reason(s) for denial of the waiver;
9. Any foreseeable harm analyses resulting from a FOIA request;
10. For any FOIA responses that were changed after the review by the Presidentially Appointed, Senate Confirmed, Non-Career Senior Executive, and/or Schedule C Employees that is provided in the May 24, 2018, DOI Memo titled, "Awareness Process for Freedom of Information Act Productions," the version of the FOIA response that was sent to such employees, and the version of the FOIA response that was ultimately released to the requestor or the public;
11. Documents sufficient to show the FOIA requests that were delayed whenever the awareness review detailed in the May 24, 2018, DOI Memo titled, "Awareness Process for Freedom of Information Act Productions" resulted in the FOIA office missing court-ordered deadlines for document production; and
12. Any documents and communications from the DOI FOIA or Solicitor's office related to the awareness review process or "heightened awareness" that specifically mention senior Interior officials, including but not limited to David Bernhardt.

Please contact staff from the Oversight and Investigations Subcommittee of the Committee on Natural Resources at (202) 225-6065 and staff from the Committee on Oversight and Reform at (202) 225-5051 with any questions about this request.

Thank you for your assistance. We look forward to your response.

Sincerely,



Raúl M. Grijalva
Chairman
Committee on Natural Resources



Elijah E. Cummings
Chairman
Committee on Oversight and Reform



TJ Cox
Chairman
Subcommittee on Oversight and Investigations
Committee on Natural Resources