



# United States Department of the Interior

OFFICE OF THE SOLICITOR  
Washington, D.C. 20240

March 16, 2015

IN REPLY REFER TO:  
Appeal No. 2014-065

Joanna McCall

(b) (6)

Dear Ms. McCall:

This responds to the December 12, 2013, Freedom of Information Act (“FOIA”) appeal (“appeal”) (No. **2014-065**) that you filed with the Department of the Interior (“Department”). The appeal concerns your November 5, 2013, FOIA request to the National Park Service (“NPS”) that sought documents generally pertaining to a “ban on the sale of water in disposable plastic bottles in any unit of the National Park System.” In response to the FOIA request, the NPS advised you that it “had previously received several FOIA requests related to this issue, the responsive documents for which have been posted on [its] Frequently Requested Documents website. Accordingly the information you have requested is already available [at the web address provided].” You timely filed this appeal, asserting that the NPS’s response and search for documents that are responsive to the FOIA request were inadequate.

Your appeal is **GRANTED**, as the NPS’s assertion in its response that the documents you requested are “already available” on its website is inaccurate. The Department’s review of the documents the NPS posted on its website under the heading “Records Relating to Plastic Bottles” reveals that they reflect only a limited number of potentially responsive documents:

1. Some documents pertaining to Grand Canyon National Park’s (“GCNP”) delay in implementing a ban;
2. Link to GCNP’s webpage regarding “Bottle Refilling Stations” and, also posted on GCNP’s website, a copy of the Superintendent’s request to the Regional Director for “Approval to Eliminate the Sale of Water in Individual Disposable Containers” and its final document on the “Analysis of Potential Impacts/Effects of Bottle Ban”;
3. Links to “News Releases” on the three National Park units’ websites announcing their decisions to install water filling stations, one website of which also includes a link to the park’s final “analysis of bottle ban impacts”;
4. A final document from Zion National Park entitled “Analysis of the Elimination of Sales of Water in Individual Disposable Containers”;
5. Ban approval requests for six National Park units, five of which attached the National Park units’ final documents on the “Analysis of Potential Impacts/Effects of Bottle Ban”; and
6. The NPS December 2011 policy document regarding this issue.

Even a cursory reading of the FOIA request at issue in the appeal shows that you seek much more:

[A]ll records relating to the consideration of any ban on the sale of water in disposable plastic bottles in any unit of the National Park System, or to any decision to ban or not to ban the sale

of water in disposable plastic bottles in any unit of the National Park System [and two subsets regarding requests from a superintendent to a regional director for approval of a ban and the regional director's decisions on those requests, including the supporting materials for both]; and

[A]ll records relating to the effects of any bottled water ban in any unit of the National Park System, including all records relating to any annual evaluations undertaken pursuant to [the NPS policy], including impacts of the ban on [five specific areas].

The limited documents posted on the NPS's website fall well short of addressing the breadth of documents that you requested. For the National Park units whose ban approval letters the NPS did post, the NPS website does not include copies of "*all records relating to* [their] consideration of any ban," as you requested. Nor did the NPS post ban approval letters for other National Park units that have implemented a ban or any of the requested records "relating to" their consideration of taking such an action.

Also absent from the NPS's website are copies of "*all records relating to* the consideration of any ban" by "any unit of the National Park system" that is still considering one or that may have considered a ban but did not implement one or went a different route entirely. Since you did not limit the scope of the FOIA request to seek documents only from National Park units that actually implemented a ban, any documents that may exist at any National Park unit relating to their consideration of a ban (even if they did not implement one) are also responsive.

The Department also did not find "*all records relating...to* any decision to ban or not to ban the sale of water in disposable plastic bottles in any unit of the National Park System" on the NPS's website. The NPS's website also does not include copies of *all* requests from Superintendents to Regional Directors for approval of a ban, the Regional Directors' decisions on those requests, or the supporting materials for both of these items.

As for the second aspect of the FOIA request that seeks "all records relating to the effects of any bottled water ban in any unit of the National Park System," the NPS website contains little information. While the NPS website contains or links to the final documents with the analysis on the effects of a ban in eight National Park units, the website does not include links to or copies of "all records *relating to*" the "effects of a ban" discussed in any of these final documents, which are also responsive to the FOIA request. For example, any underlying documents or data relating to the effects of a ban that the NPS prepared, received, or used to develop those final documents are responsive, e.g., documents, information, or data related to the effects of a ban or communications between NPS staff or with concessioners or others regarding the effects of a ban. There is nothing on the NPS's website that reflects any of these underlying documents.

Further, the Department notes that the second aspect of the FOIA request is not limited to seeking documents related only to those eight final analysis documents that the NPS posted/linked to on its website or only to National Park units that have ultimately implemented a ban. Rather, the request plainly seeks "all" documents "relating to the effects of any bottled water ban" "in any unit of the National Park System." So, it matters not whether a particular National Park unit actually implemented a ban for documents "relating to the effects of [a] ban" at that unit to be responsive. They are in fact responsive.

Moreover, there is nothing on the NPS's website that addresses the portion of the FOIA request that seeks "all records relating to any annual evaluations undertaken pursuant to [the NPS policy]" or the impacts of a ban on the five subparts that you listed in the request. Nor did the NPS advise you in its response to the FOIA request that it does not have or could not locate these or any of the other documents that you seek.

Finally, the Department notes that both aspects of the request also encompass any responsive documents that may exist (e.g., "all records relating to" "the consideration of any ban," or "any decision to ban or not ban," or "to the effects of any...ban" "in any unit of the National Park System") in offices outside of a particular National Park unit (e.g., NPS's regional and headquarters offices). The only documents on the NPS's website from offices outside of a National Park unit are the NPS's policy document signed by its Director and some from an office in its headquarters that pertain to a delay on implementing a ban at GCNP.

With all of the above types of potentially responsive documents missing from the NPS's website and nothing in the NPS's response to the request indicating that it does not have or could not locate (certain) responsive documents, it is not clear why the NPS asserted in its response that the documents you seek are "already available" on its website or why it seemingly believed that its response to the FOIA request was sufficient. It clearly was not.

Indeed, in connection with the appeal, the NPS advised the Department that it did not even conduct a search of the files in its offices that are likely to have responsive documents to determine what, if any, additional documents outside of the limited ones posted on its website actually exist.

Accordingly, to resolve the NPS's deficient response to the FOIA request and its processing error of not conducting a search, **by copy of this letter, the Department will REMAND the appeal to the NPS for it to:**

- **Conduct the required search of the paper and electronic files (including e-mails) of "any unit in the National Park System" and its regional and headquarters offices that are likely to have documents that are responsive to the FOIA request.**
  - In determining which documents are responsive to the FOIA request, the NPS will include any documents that are in its possession and control on the date it begins the search.
  - If the NPS locates documents that are responsive to the FOIA request, it will either release the requested documents or invoke a FOIA exemption as a basis to withhold them in full or in part.
    - Should the NPS determine to invoke a FOIA exemption to deny the Appellant access to any portion of any responsive documents or information that it locates, the letter it sends to her will contain all of the information the Department's FOIA regulations require a bureau to include when it makes such a determination.<sup>1</sup>

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<sup>1</sup> 43 C.F.R. § 2.24(b)(1)-(5).

- If the NPS determines that it does not have or cannot locate documents that are responsive to any aspect of the FOIA request, its letter to the Appellant will advise her of this finding and include a brief statement of the reason.
- **The NPS will complete its processing of the remand, including releasing to the Appellant the disclosable portions of any responsive documents that it locates, within 20 workdays from the date of this decision.**
- If the NPS's search for responsive documents yields a voluminous amount of documents, it may stagger its release of any non-exempt documents (or portions thereof) as they become available, **with the NPS's first release occurring no later than 20 workdays from the date of this decision.**
  - Should the NPS determine that it is necessary for it to stagger the release of documents, it will advise the Appellant of this and the letter that it sends to her will include the anticipated schedule that the NPS plans to follow in releasing the remaining materials.

The NPS will correspond directly with you regarding this remand, with a copy of its letter to this Office.

This completes the Department's response to your appeal. If you have any questions regarding this matter, please call the FOIA Appeals Office at (202) 208-5339.

Sincerely,



Darrell R. Strayhorn  
FOIA Appeals Officer  
Department of the Interior

cc: Charis Wilson, FOIA Officer, NPS (**FOR ACTION** (see pgs. 3-4))  
Cindy Cafaro, Departmental FOIA Officer