



# United States Department of the Interior

OFFICE OF THE SOLICITOR  
Washington, D.C. 20240

IN REPLY REFER TO:  
Appeal No. 2014-160

May 8, 2015

Rachel Wellhausen  
The University of Texas at Austin  
Department of Government  
158 W 21<sup>st</sup> Street, Stop A1800  
Austin, TX 78712

Dear Ms. Wellhausen:

This responds to the September 10, 2014, Freedom of Information Act (“FOIA”) appeal (“appeal”) that you filed with the Department of the Interior (“Department”), which it received on September 16, 2014, and that it assigned as **Appeal Number 2014-160**. Your appeal concerns a May 8, 2014, FOIA request that you submitted to the Office of Indian Energy and Economic Development, Bureau of Indian Affairs (hereinafter referred to as the “BIA”), which sought:

- A list of which Native American tribes have adopted corporation codes, LLC codes, and/or uniform commercial codes...and when they were adopted...
- Information provided to Energy and Mineral Development Program [(“EMDP”)] grant recipients on how to ‘negotiate the best agreements with partners or investors.’ ...
- A list of tribal and private industry participants in efforts the [Division of Energy and Mineral Development (“Division”)] has made to help tribes ‘to market their resources to private industry,’ and any documentation on outcomes of those efforts...
- Access to the digital portion of the ‘national database and warehouse of Indian energy and mineral data.’ ...
- Access to the Oil and Gas Management Software (NIOGEMS)[.]

The BIA responded to the FOIA request by advising that it has no records that are responsive to the FOIA request and informing you that your request for “access” to the last two items in the request is not a request for agency records. You timely filed this appeal.

While you state in the appeal letter that you are “appealing the finding that there are ‘no records responsive to [your] request’ with regard to three portions of [your] request,” you did not offer any information that actually challenges the BIA’s determination or otherwise explains why the BIA’s response is in error.<sup>1</sup> Instead, you “restate[d]” three of the items in the FOIA request and “reworded” them “to be as broad as possible, in case [your] specificity caused an issue in the original request.” You “reworded” your FOIA request to seek:

- Any information the Division has or advisory materials the Division provides on Native American corporation codes, LLC codes, and/or uniform commercial codes.

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<sup>1</sup> See 43 C.F.R. § 2.59(b)(2) (provision in the Department’s FOIA regulations that requires a requester who files an appeal to provide an “explanation of why [she] believe[s] the bureau’s response was in error.”).

- Any information provided to [EMDP] grant recipients and a list of those grant recipients.
- Any information on tribal and private industry participants in efforts the Division has made to help tribes ‘to market their resources to private industry,’ as well as any documentation on those efforts themselves...

Before detailing the decision on your appeal, the Department must note that in order to trigger the right of access to agency records under the FOIA, a requester must reasonably describe the records requested,<sup>2</sup> which requires requesters to “reasonably describe the records sought...[in] sufficient detail to enable bureau personnel familiar with the subject matter of the request to locate the records with a reasonable amount of effort.”<sup>3</sup> The courts have found that the “linchpin inquiry” on whether a request reasonably describes the records sought “is whether the agency is able to determine ‘precisely what records [are] being requested.’”<sup>4</sup>

However, “[e]ven where a request ‘identif[ies] the documents requested with sufficient precision to enable the agency to identify them,’ the request may still fail to ‘reasonably describe[]’ the records sought if it is ‘so broad as to impose an unreasonable burden upon the agency.’”<sup>5</sup> Typically, requests that require an agency to research what actions it has taken on an issue or determine what, if any, unspecified documents it may have sent to unspecified individuals or entities (thereby requiring the agency to review every document in its office to determine whether it sent the item to the unspecified individual/entity) do not reasonably describe the records sought. As a result, a bureau is not required to process such unreasonably described or unduly burdensome requests.

In this case, while the Department is not certain that each of the items in your “restate[d]” FOIA request reasonably describes the records that you seek, it will nonetheless forward the matter to the BIA for evaluation. Should the BIA determine that any of the “restate[d]” items that you listed in the appeal do not reasonably describe the records that you seek and, thus, it cannot proceed with the processing of the matter (or particular items) as a new FOIA request, it will advise you of this finding and of the additional information it needs for you to provide before it will begin processing the item(s).<sup>6</sup>

Accordingly, **by copy of this letter, the Department is forwarding the “restate[d]” FOIA request to the BIA for evaluation.** The BIA will correspond directly with you (subject to the time limits and other requirements that are applicable to new FOIA requests).

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<sup>2</sup> 5 U.S.C. § 552(a)(3)(A).

<sup>3</sup> 43 C.F.R. § 2.5(a).

<sup>4</sup> *Nat’l Sec. Counselors v. CIA*, 898 F. Supp. 2d 233, 274 (D.D.C. 2012) (quoting *Yeager v. DEA* 678 F.2d 315, 322, 326 (D.C. Cir. 1982) (alteration in original)).

<sup>5</sup> *Nat’l Sec. Counselors v. CIA*, 960 F. Supp. 2d 101, 163 (D.D.C. 2013) (quoting *Am. Fed’n Gov’t Emps., Local 2782 v. U.S. Dep’t of Commerce*, 907 F.2d 203, 209 (D.C. Cir. 1990) and, to illustrate the point, using the example “if a FOIA requester sought ‘all CIA records printed in the English language,’ the agency certainly would know what the requester was asking the agency to produce. The problem with such a request, however, is its breadth, rather than its opaqueness.”).

<sup>6</sup> See 43 C.F.R. § 2.5(d).

This completes the Department's response to your appeal. If you have any questions for the BIA regarding its evaluation of the items that you listed in the appeal, please call Daniel Largo, the BIA's FOIA Officer, at (202) 208-5097.

For questions regarding your appeal, please call the FOIA Appeals Office at (202) 208-5339.

Sincerely,



Darrell R. Strayhorn  
FOIA Appeals Officer  
Department of the Interior

cc: Daniel Largo, FOIA Officer, BIA (**FOR ATTENTION**)  
Jack Stevens, Office of Indian Energy and Economic Development, BIA  
Cindy Cafaro, Departmental FOIA Officer