



United States Department of the Interior

OFFICE OF THE SOLICITOR
Washington, D.C. 20240

IN REPLY REFER TO:
Appeal No. 2015-074

April 20, 2015

Kyle Tisdell
Western Environmental Law Center
208 Paseo del Pueblo Sur, Unit 602
Taos, New Mexico 87571

Dear Mr. Tisdell:

This responds to the March 12, 2015, Freedom of Information Act (“FOIA”) appeal (“appeal”) that you filed with the Department of the Interior (“Department”), which it received on the same date and that you filed on behalf of High Country Conservation Advocates and Citizens for a Healthy Community. Your appeal, which the Department assigned as **Appeal Number 2015-074**, concerns the January 12, 2015, FOIA request from your clients to the Bureau of Land Management (“BLM”) that sought documents pertaining to certain proposed and approved natural gas and oil exploration, development, and related activities in the Gunnison National Forest. You filed the appeal to challenge whether the BLM conducted an adequate search of its files for responsive documents and its decision to withhold, pursuant to the deliberative process privilege of FOIA exemption (5),¹ certain information from a document that is responsive to the FOIA request.

With regard to your challenge of the BLM’s decision to invoke the deliberative process privilege of exemption (5), the Department’s review of the redacted information reveals that the BLM properly withheld the information. This protected information reflects status updates on agency deliberations regarding various projects underway and potential projects that could arise. The BLM prepared these status updates prior to reaching a decision on the final action to take on each item and its creation is the result of candid and open exchanges among agency employees during their assistance in the development of agency policy. Accordingly, the aspect of the appeal that challenges the exemption (5) withholding is **DENIED**.

As to your challenge of the adequacy of the BLM’s search for responsive documents, this aspect of the appeal is **GRANTED**. Please be aware that to decide this issue in the appeal, the Department requested that the BLM review the issues that you raised regarding its search and the initial file search that it conducted to locate any responsive documents that might exist. After performing these reviews, the BLM has advised that it located additional responsive documents in its Colorado State Office. These newly located documents consist of an e-mail string with the subject “Exploration Drilling” and two e-mailed meeting invitation requests.

Since the BLM has located additional responsive documents, **by copy of this letter, the Department is remanding this aspect of the appeal to the BLM for it to:**

- **Issue another response to the Appellant regarding the releasability of the additional documents that it has located.**

¹ Exemption (5) protects “inter-agency or intra-agency memorandums or letters which would not be available by law to a party...in litigation with the agency.” 5 U.S.C. § 552(b)(5).

- Should the BLM determine to invoke a FOIA exemption as a basis to withhold any portion of these newly located responsive documents, its response to the Appellant will contain all of the information that the Department's FOIA regulations ("regulations") require a bureau to include in such a response. *See 43 C.F.R. § 2.24.*

Further, with regard to the BLM's search, the Department's review of the newly located documents and the search efforts that the BLM used to locate responsive documents reveals that the BLM's search did not extend to the files of all of the likely possessors of responsive documents. For example, while the BLM had some of the individuals on the "Exploration Drilling" e-mail chain and the meeting invitation requests conduct searches, the record before the Department does not establish that the BLM contacted all of the individuals listed on those documents to request that they too conduct searches of their paper and electronic files.

To correct the issue with the BLM's search, **by copy of this letter, the Department is remanding the appeal to the BLM for it to:**

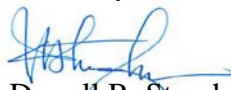
- **Conduct searches of the paper and electronic files (including e-mails) of all of the likely possessors of responsive documents in the relevant State and Field Office** using key words from the request that are likely to uncover any responsive documents that might exist.
- **Make a determination on the releasability of any documents that it may locate during this third search**, ensuring that any decision to withhold documents in full or in part includes a response that complies with § 2.24 of the regulations.
 - If the BLM's third search of its files does not yield additional responsive documents, it will advise the Appellant of this finding.

The BLM will correspond directly with the Appellant regarding the remand of both items within 15 workdays of the date of this decision (including releasing the non-exempt portions of the additional documents that it has already located and the portions of any new ones it locates in the third search), with a copy of its letter to this Office.

This completes the Department's response to your appeal. Pursuant to 5 U.S.C. § 552(a)(4)(B), you have a right to seek judicial review of the Department's decision to uphold the BLM's invocation of exemption (5).

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: Ryan Witt, FOIA Officer, BLM (**FOR ACTION**)
 Laura Garcia-Hinojosa, Acting Colorado State FOIA Officer, BLM
 Kristen Guerriero, Attorney-Advisor, SOL-Rocky Mountain Region
 Cindy Cafaro, Departmental FOIA Officer