



United States Department of the Interior

OFFICE OF THE SOLICITOR
Washington, D.C. 20240

May 20, 2015

IN REPLY REFER TO:
Appeal No. 2015-094

Jonathan B. Ratner
Western Watersheds Project
P.O. Box 1160
Pinedale, WY 82941

Dear Mr. Ratner:

This responds to the April 7, 2015, Freedom of Information Act ("FOIA") appeal ("appeal") that you filed with the Department of the Interior ("Department"), which the Department received on the same date and assigned as **Appeal Number 2015-094**. Your appeal concerns your March 6, 2015, FOIA request to the Bureau of Land Management ("BLM") that seeks: "1) [Facility Asset Management System ("FAMS")] Databases for the Pinedale, Lander, Rock Springs[,] and Kemmerer Field Offices (including any GIS data)"; "2) State Office FAMS database"; and "3) Route Analysis Reports...or similar files for" 26 route numbers that you listed in the FOIA request. In response to Items 1 and 2 of the FOIA request, the BLM advised you that it "does not provide public access to [FAMS]" and "den[ied] your request for system access." For Item 3 of the FOIA request, the BLM advised you that it did not locate records responsive to this item of your request. You filed this appeal to challenge the BLM's determination on all three items.

For Items 1 and 2 of the FOIA request, your appeal is **GRANTED**, as the BLM's processing of and response to these items is incomplete. You did not merely request "system access" to the FAMS databases, as the BLM's response indicates; you requested copies of the databases. Indeed, in response to these two items, the BLM sent you an e-mail message seeking to "clarify what information you are specifically looking for..." You advised that for Item 1 you are seeking "the databases themselves from the [Field Office] level." For Item 2, you advised that you are seeking "the state level database if there are any data in one but not the other."

The BLM responded to your clear confirmation that you were seeking copies of "the databases themselves" by following up again to inquire whether "you are asking us to grant you access to the databases themselves." While you advised the BLM that access to the databases would be preferable, you nonetheless made clear that you still wanted copies of the databases if that option was not available: "Read-only access would be by far the simplest approach. *If not[,]* then in some standard relational database format." (emphasis added).

Since the BLM's response to Items 1 and 2 of the FOIA request only addressed whether it would grant you "system access" and not whether it would release copies of the requested databases, as you requested, the Department concludes that the BLM's processing of and response to these items is incomplete. To resolve this, **by copy of this letter, the Department is remanding these items to the BLM for it to:**

- **Release copies of the FAMS databases requested in Items 1 and 2 of the FOIA request in the format requested (i.e., "some standard relational database format") or invoke a FOIA exemption as a basis to withhold the requested databases in full or in part.**

- If the BLM determines that it cannot readily reproduce the databases in the requested format, it will advise the Appellant of this in writing, explain why, and apprise him of the format(s) in which it can provide the requested databases--affording the Appellant with a reasonable time limit to respond (e.g., 20 workdays) with his selection of a new format.
 - Should the BLM determine to invoke a FOIA exemption as a basis to withhold any portion of the requested databases, the response that it sends to the Appellant advising of this determination will include all of the information that the Department's FOIA regulations require a bureau to include in such a response, e.g., a reference to the exemption(s) invoked and the name and title of the attorney in the Office of the Solicitor that the BLM consulted regarding the withholding.¹
- **Complete the processing of the request for copies of the FAMS databases requested in Items 1 and 2 of the FOIA request within 20 workdays from the date of this decision.**

The BLM will correspond directly with you on the processing of Items 1 and 2, with a copy of its letter to this Office.

With regard to Item 3 of the FOIA request that seeks "Route Analysis Reports," the Department concludes that the BLM conducted an adequate search of its files, but did not locate any documents that are responsive to this item to disclose to you. Therefore, this aspect of the appeal is **DENIED**. The rationale for this determination follows.

The FOIA requires an agency to disclose, upon request by any person, non-exempt documents that are in its possession and control and are retrievable by a reasonable search of its files.² To decide appeals such as yours that challenge a bureau's determination that it did not locate documents that are responsive to an item in a FOIA request, the Department looks at whether the bureau conducted a reasonable search of its files in an effort to locate the requested materials. A reasonable search is one that is "reasonably calculated to uncover the sought materials."³ Where a bureau has conducted a reasonable search of its files to locate the requested documents, the Department will deem its search as adequate. The fact that a bureau does not locate documents that are responsive to a FOIA request does not mean that the search was not adequate.⁴ The bureau simply cannot produce documents that it does not have or cannot locate through a reasonable search.

In this case, the BLM has advised the Department that it conducted manual and electronic searches of the files in its offices that are most likely to contain the documents requested in Item 3, i.e., its High Desert District Office in Rock Springs, the Rock Springs, Kemmerer and Pinedale Field Offices, the

¹ See 43 C.F.R. § 2.24(b)(1) – (5).

² See 5 U.S.C. § 552(a)(3).

³ See *Judicial Watch, Inc. v. United States DOE*, 310 F. Supp. 2d 271, 296 (D.D.C. 2004) (quoting *Weisberg v. Department of Justice*, 745 F.2d 1476, 1485 (D.C. Cir. 1984)).

⁴ See *Jennings v. DOJ*, 230 F. App'x 1, 1 (D.C. Cir. 2007) (finding that "the adequacy of a FOIA search is generally determined not by the fruits of the search, but by the appropriateness of the methods used to carry out the search"); *Miccosukee Tribe of Indians of Fla. v. United States*, 516 F.3d 1235, 1247-48 (11th Cir. 2008); *Radcliffe v. IRS*, No. 081513, 2009 WL 1459449, at *1-2 (2d Cir. May 27, 2009).

Big Horn Basin/Wind River District Office, and the Lander Field Office. Since these offices deal with the various route numbers that you listed in Item 3 of the request, the Department concludes that these were the appropriate offices for the BLM to search for any responsive documents that may exist.


Further, the BLM had the appropriate personnel in those offices (i.e., engineering and realty personnel at each office and, as necessary, a GIS specialist to locate the roads) perform manual searches of its road files, review notations on Master Title and Oil and Gas plats ("MT/OG plats"), and conduct electronic searches of LR2000⁵ in an effort to locate responsive documents. The BLM has advised that the files/system it searched would contain (or, in the case of the notations on the MT/OG plats, provide leads on) any information regarding route analysis reports for the route numbers that you listed. However, its extensive search efforts did not uncover any documents that are responsive to any of the routes listed in Item 3 of the FOIA request.

Based on the foregoing, the Department concludes that the efforts the BLM undertook to locate documents that are responsive to Item 3 of the FOIA request were sufficient for it to meet its obligation under the FOIA to conduct a search that was reasonably calculated to uncover the requested documents. Therefore, the Department concludes that the BLM's search was adequate and, as a result, the aspect of the appeal that challenges the BLM's determination that it did not locate documents that are responsive to Item 3 of the FOIA request is denied.

If you are dissatisfied with the Department's determination that the BLM conducted an adequate search of its files for documents that are responsive to Item 3 of the FOIA request, you have a right to seek judicial review of this decision under 5 U.S.C. § 552(a)(4)(B).

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: Ryan Witt, FOIA Officer, BLM (**FOR ACTION**)
Eric Ray, Wyoming State FOIA Officer, BLM
Cindy Cafaro, Departmental FOIA Officer

⁵ The BLM describes LR2000 on its website as "a searchable database" that "provides reports on BLM land and mineral use authorizations for oil, gas, and geothermal leasing, rights-of-ways, coal and other mineral development, land and mineral title, mining claims, withdrawals, classifications, and more on federal lands or on federal mineral estate." <http://www.blm.gov/lr2000/about.htm>; <http://www.blm.gov/lr2000/index.htm>.