



# United States Department of the Interior

OFFICE OF THE SOLICITOR  
Washington, D.C. 20240

IN REPLY REFER TO:  
Appeal No. 2018-145

July 24, 2018

Geoff Davidian

(b) (6)

Dear Mr. Davidian:

This responds to the July 11, 2018, Freedom of Information Act (“FOIA”) appeal (“appeal”) that you filed with the Department of the Interior (“Department”), which the Department assigned as **Appeal Number 2018-145**. The appeal concerns your June 29, 2018, FOIA request to the Bureau of Indian Affairs (“BIA”) that seeks copies of any e-mail messages for 10 e-mail accounts, which you identified by the title of the office holder, that contain the word “Pocahontas.” In response to the FOIA request, the BIA advised you that “[t]his is not a proper FOIA request and it is not requesting records.” The BIA also noted, among other things, that “[t]he request is broad in scope” and requested that you provide additional details of what you are seeking “to allow an agency employee familiar with the subject area of the request to locate the records with a reasonable amount of effort.”

In connection with the appeal, the Department spoke with the BIA’s Acting FOIA Officer, who advised that the additional information the BIA was seeking before starting its processing of your FOIA request is a time frame (e.g., a beginning and/or end date) for the e-mail messages you seek. The BIA should have been more specific in its response to you that this is the additional information it was after instead of offering a lot of extraneous information that had nothing to do with the specifics of your FOIA request (e.g., its statement that “you should be as specific as possible with regard to names, office names, dates, addresses, and subjects, etc. For example, if your request relates to a particular office or individual, useful information would include an office name, their address, the type of business they are engaged in and a specific time period...”).

Nonetheless, **if there is a specific time frame for the e-mail messages you are seeking, please provide the dates to the BIA within 20 workdays from the date of this letter.** As required by the Department’s FOIA regulations (“regulations”), the BIA will close its file on the FOIA request if it does not receive a response from you within 20 workdays<sup>1</sup> about whether there is a specific time frame for the requested records and, if there is, the date range that applies.

Upon receipt of a response from you about whether there is a time frame for the records you seek, the BIA will begin processing the FOIA request.

## **Other Matters Referenced in the Appeal**

The Department notes the additional issues you raise in the appeal about the BIA not providing you with a tracking number for the FOIA request or notice of your right to appeal its determination.

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<sup>1</sup> 43 C.F.R. § 2.5(d)

With regard to the FOIA request tracking number, please be aware that the FOIA and the regulations require an agency to advise a requester of the individualized tracking number assigned to a FOIA request that it has determined will take longer than 10 workdays to process.<sup>2</sup> Here, the BIA responded to your FOIA request within six workdays of receipt. Thus, the provision in the FOIA and the regulations requiring the BIA to notify you of the assigned tracking number does not yet apply.<sup>3</sup>

As to the issue you raise about the BIA not providing you with notice of your appeal rights, you are correct. When a bureau determines that a request does not reasonably describe the records sought, as the BIA has done here, the regulations require it to advise requesters of, among other things, notice of their right to appeal its determination.<sup>4</sup> The Department has alerted the BIA to its error so that such a mistake does not occur in the future.

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: Heather Garcia, Acting FOIA Officer, BIA  
Cindy Cafaro, Departmental FOIA Officer

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<sup>2</sup> 5 U.S.C. § 552(a)(7)(A) (requiring each agency to “establish a system to assign an individualized tracking number for each request received that will take longer than ten days to process and provide to each person making a request the tracking number assigned to the request”); 43 C.F.R. § 2.21(b) (stating, “If the bureau determines that your request will take longer than 10 workdays to process, the bureau immediately will send you a written acknowledgment that includes the request’s individualized tracking number...”).

<sup>3</sup> Please note that the FOIA generally requires an agency to determine within 20 workdays (including the date of receipt) whether it will comply with a FOIA request. However, this 20 workday time limit is suspended (i.e., the processing clock stops running) when a bureau asks a requester for clarification on his FOIA request. The processing clock restarts upon the agency’s receipt of a response from the requester. Since the processing clock on your FOIA request stopped running when the BIA e-mailed you its request for clarification, as of the date of this decision, it remains that only six (6) workdays have elapsed and the processing clock will not start running again until the BIA receives a response from you on this matter (as discussed on the first page of this decision).

<sup>4</sup> See 43 C.F.R. § 2.5(d).