Total Number Of Records: 10

Bureau	FOIA Number	Date Received	Requester Last Name	Requester First Name	Requester Organization	Subject
Bureau Of Indian Affairs	BIA-2013-00589	February 01, 2013	Morin	Philip	Perkins Coie	OFA - Copy of Juaneno Band of Mission Indians finding against acknowledgment.
Bureau of Land Management	BLM-2013-00522	March 29, 2013	Wilhelm	Michael	Walter & Wilhelm Law Group	(BLM-CA) 4 Categories of Records related to the San Joaquin Desert Hills Area of Critical Environmental Concern (ACEC), California Foothill Legacy Area (CFLA), and the Panoche Valley Solar Farm
Bureau of Ocean Energy Management	BOEM-2013-00008	November 02, 2012	Parker	Audra	Alliance to Protect Nantucket Sound	All records of written/oral communications between Cape Wind Associates LLC (Cape Wind) & its reps, Massachusetts State, pro-Cape Wind group, Federal agency, individual or BOEM official CW Project. "All records" encompass any documents, including correspondence, meeting minutes, memoranda, emails, spreadsheets, reports, appointments, meeting schedules or other records regardless of form. The Alliance seeks all communications from July 18, 2011 to the date of DOl's response to this request.
U.S. Fish and Wildlife Service	FWS-2013-01018	July 02, 2013	Keats	Adam	Center for Biological Diversity	Tehachapi Uplands Multi-Species Habitat Conservation Plan and California condor/Condor Reintroduction Program records as relates to Tejon Ranch Corporation, Tejon Ranchcorp, Tejon Ranch, Tejon Mountain Village, DUDEK, and/or DMB Associates.
						Use of private communication services for the conduct of official

Office of the Secretary	OS-2013-00282	July 17, 2013	Levin	Robert	Landmark Legal Foundation	agency business by political appointees of DOI. Records evincing the use of any private or personal email account, text messaging service, instant messaging service, or any other private electronic communication, included but not limited to those sent via any social media service such as Facebook, Google Plus or otherprivate platform, for the conduct of Agency business from January 20, 2009 to July 15, 2013. See below.
Office of the Solicitor	SOL-2013-00078	June 03, 2013	Baur	Donald		Cowlitz Indian Tribe
Bureau Of Indian Affairs	BIA-2012-01156	June 05, 2012	Hay	Jeremy	The Press Democrat	OFA - Copy of documents received for the Graton Rancheria before their restoration in 2000.
Bureau of Safety and Environmental Enforcement	MMS-2012-00041	December 07, 2011	Hall	Machelle	Tulane Environmental Law Clinic	BSEE dccs relating to Taylor Energy Company LLC's decommissioning efforts in MC 20, Lease OCS G04935.
Bureau of Ocean Energy Management	MMS-2012-00040	December 07, 2011	Hall	Machelle	Tulane Environmental Law Clinic	All BOEM documents relating to Taylor Energy Company LLC's decommissioning efforts in MC Block 20, Lease No. OCS-G 04953.
Office of the Secretary	OS-2012-00176	February 14, 2012	Kunzelman	Michael	The Associated Press	Emails sent and received by Secretary between 4/20/2010 and 7/31/2010.

United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

IN REPLY REFER TO:
7202.4-OS-2012-00176

February 14, 2012

Michael Kunzelman
The Associated Press
1515 Poydras Street, suite 2500
New Orleans, LA 70112

Dear Mr. Kunzelman:

On February 13, 2012, you filed a Freedom of Information Act (FOIA) request seeking "copies of all emails sent and received by Secretary Ken Salazar between April 20, 2010 (the date of the Deepwater Horizon rig explosion) and July 31, 2010."

Your request was received in the Office of the Secretary FOIA office on February 14, 2012, and assigned control number **OS-2012-00176**. Please cite this number in any future communications with our office regarding your request.

With respect to your request:

We have classified your request as a "media use request." As a "media use requester" you are required to pay for duplication after 100 pages. As a matter of policy, however, the Department of the Interior does not bill requesters for FOIA fees incurred in processing requests when their fees do not exceed $30.00, because the cost of collection would be greater than the fee collected. (See 43 C.F.R. §2.18(a)).

You have asked for a waiver of all FOIA processing fees. Please be advised that we are in the process of determining whether or not your entitlements are sufficient to enable us to process your request, or if we will need to issue a formal determination on your request for a fee waiver.

You have asked for copies of agency records. According to our regulations, you may choose the format of disclosure for such records. Unless you specify otherwise, the Office of the Secretary will provide copies of responsive records on a CD-ROM disk as scanned PDF images when the responsive records exceed 50 pages.

Because we will need to consult with one or more bureaus of the Department in order to properly process your request, the Office of the Secretary FOIA office is taking a 10-workday extension under 43 C.F.R. §2.13(3). For the same reason, we are placing your request under the "Complex" processing track. See 43 C.F.R. §2.26.

Given the subject of your request, we are initiating a search within the Secretary's Immediate Office. You may expect to hear from us shortly regarding the outcome of this search.

In the interim, if you have any questions regarding the status of your request, or any of the issues discussed in this letter, you may contact Clarice Julka by phone at 202-208-6045, by fax at 202-219-2374, by e-mail at os_foia@ios.doi.gov or by mail at U.S. Department of the Interior, 1951 Constitution Avenue, N.W., MS 116-SIB, Washington, D.C. 20240. Within the Office of the Secretary, we are committed to providing you, our customer, with the highest quality of service possible.

Sincerely,

Ray J. McInerney

Ray J. McInerney
Office of the Secretary
FOIA Officer

***PRIVACY ACT notice**: Before you choose to contact us, electronically, there are a few things you should know. The information you submit, including your electronic address, may be seen by various people. We will scan a copy of your request into our electronic OS FOIA administrative/image file. We will key the information that you provide to us into our electronic OS FOIA tracking file. We may share it with other individuals, both within and without the Department, involved in Freedom of Information Act administration. You may be contacted by any of these individuals. In other limited circumstances, including requests from Congress or private individuals, we may be required by law to disclose some of the information you submit. Also, e-mail is not necessarily secure against interception. If your communication is very sensitive, or includes personal information like your bank account, charge card, or social security number, you might want to send it by postal mail, instead.*

United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

IN REPLY REFER TO:
7202.4-OS-2012-00176

May 16, 2014

Michael Kunzelman
The Associated Press
1515 Poydras Street, Suite 2500
New Orleans, LA 70112

Dear Mr. Kunzelman:

On December 21, 2012, you filed a Freedom of Information Act (FOIA) request seeking the following:

> [C]opies of all emails sent and received by Secretary Ken Salazar between April 20, 2010 (the date of the Deepwater Horizon rig explosion) and July 31, 2010.

On February 13, 2012, we acknowledged your request and advised you of your fee status under the FOIA. We are writing today to partially respond to your request on behalf of the Office of the Secretary. Please find enclosed one CD containing 3 files consisting of 1417 pages. Of those 1417 pages, 1219 are being released in full and 198 pages contain redactions as described below. To the extent redactions have been made to such pages, you will find that the redactions are indicated on the released portion of such records, together with exemption(s) under which such redactions were made.

Portions of the enclosed documents have been redacted pursuant to Exemption 5 of the FOIA (5 U.S.C. § 552 (b)(5)) under the following privileges:

Confidential Commercial Information
Deliberative Process

Exemption 5 allows an agency to withhold "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). As such, the Exemption 5 "exempt[s] those documents... normally privileged in the civil discovery context." National Labor Relations Bd. v. Sears Roebuck & Co., 421 U.S. 132, 149 (1975). The exemption incorporates the privileges that protect materials from discovery in litigation. These privileges include deliberative process, confidential commercial information, attorney work-product, and attorney-client. See id.; see also Federal Open Market Committee v. Merrill, 443 U.S. 340, 363 (1979) (finding a confidential commercial information privilege under Exemption 5).

Confidential Commercial Information Privilege
When the government enters the marketplace as an ordinary commercial buyer or seller, the government information is protected from competitive disadvantage under Exemption 5. Government Land Bank v. General Services Administration, 671 F.2d 663, 665 (1st Cir. 1982). Exemption 5 prevails "where the document contains 'sensitive information not otherwise available,' and disclosure would significantly harm the government's commercial interest." Id. at 666; see also Merrill, 443 U.S. at 363.

Pursuant to the confidential commercial information privilege, conference call codes and passcodes have been withheld under Exemption 5. This information constitutes "intra-agency" documents because they are only shared with members of the Department of the Interior for the purpose of conducting official government business. Moreover, this information qualifies as "confidential commercial information" because the government entered the marketplace as an ordinary commercial buyer.

In line with Land Bank and Merrill, the information is "sensitive and not otherwise available." If the information was released, the government's financial interest would be significantly harmed. The conference calls would no longer be private since unknown, non-governmental parties would have the ability to listen in to the calls. The funds spent on purchasing the information would therefore be wasted, and the information would be of no use.

Because the release of this information would significantly harm the government's financial interest by publicizing sensitive information, the Office of the Secretary is withholding it in accordance with Exemption 5 of the FOIA.

Deliberative Process Privilege
The deliberative process privilege "protects the decisionmaking process of government agencies" and "encourages the frank discussion of legal and policy issues" by ensuring that agencies are "not forced to operate in a fishbowl." Mapother v. United States Dep't of Justice, 3 F.3d 1533, 1537 (D.C. Cir. 1993) (citing Wolfe v. United States Dep't of Health & Human Services, 839 F.2d 768, 773 (D.C. Cir. 1988)). Three policy purposes have been advanced by the courts as the bases for this privilege: (1) to encourage open, frank discussions on matters of policy between subordinates and superiors; (2) to protect against premature disclosure of proposed policies before they are finally adopted; and (3) to protect against public confusion that might result from disclosure of reasons and rationales that were not in fact ultimately the grounds for an agency's action. See Coastal States Gas Corp. v. United States Dep't of Energy, 617 F.2d 854, 866 (D.C. Cir. 1980).

The deliberative process privilege protects materials that are both predecisional and deliberative. Mapother, 3 F.3d at 1537; Access Reports v. United States Dep't of Justice, 926 F.2d 1192, 1195 (D.C. Cir. 1991); Vaughn v. Rosen, 523 F.2d 1136, 1143-44 (D.C. Cir. 1975). A "predecisional" document is one "prepared in order to assist an agency decisionmaker in arriving at his decision," and may include "recommendations, draft documents, proposals, suggestions, and other subjective documents which reflect the

personal opinions of the writer rather than the policy of the agency." Maricopa Audubon Society v. United States Forest Service, 108 F.3d 1089, 1093 (9th Cir. 1997). A predecisional document is part of the "deliberative process" if "the disclosure of [the] materials would expose an agency's decisionmaking process in such a way as to discourage candid discussion within the agency and thereby undermine the agency's ability to perform its functions." Dudman Communications Corp. v. Department of the Air Force, 815 F.2d 1565, 1568 (D.C. Cir. 1987).

Those portions of the documents that have been withheld pursuant to the deliberative process privilege of Exemption 5 are both predecisional and deliberative. They do not contain or represent formal or informal agency policies or decisions. They are the result of frank and open discussions among employees of the Department of the Interior. Therefore, their content has been held confidential by all parties. Public dissemination of this information would have a chilling effect on the agency's deliberative processes; it would expose the agency's decision-making process in such a way as to discourage candid discussion within the agency and thereby undermine its ability to perform its mandated functions.

Portions of the enclosed documents have been redacted by OSC pursuant to Exemption 6 of the FOIA (5 U.S.C. § 552(b)(6)) because they fit certain categories of information:

Email Addresses
Home Addresses
Telephone Numbers
Personal Information

Exemption 6 allows an agency to withhold "personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." The courts have held that the phrase "similar files" involves all information that applies to a particular person. Hertzberg v. Veneman, 273 F. Supp. 2d 67, 85 n.11 (D.D.C. 2003).

To determine whether releasing requested information would constitute a clearly unwarranted invasion of personal privacy, agencies are required to perform a "balancing test." This means that an agency must weigh the individual's right to privacy against the public's right to disclosure.

(1) First, an agency must determine whether the individual has a discernable privacy interest in the information that has been requested.
(2) Next, an agency must determine whether release of this information would serve "the public interest generally" (i.e., would "shed light on the performance of the agency's statutory duties").
(3) Finally, an agency must determine whether the public interest in disclosure is greater than the privacy interest of the individual in withholding.

The information that we are withholding consists of personal information, and we have determined that the individuals to whom this information pertains have a substantial privacy interest in it. Additionally, we have determined that the disclosure of this information would shed little or no light on the performance of the agency's statutory duties and that, on balance, the public interest to be served by its disclosure does not outweigh the privacy interest of the individuals in question, in withholding it. Nat'l Ass'n of Retired Fed. Employees v. Horner, 879 F.2d 873, 879 (D.C. Cir. 1989).

In summation, we have determined that release of the information that we have withheld would constitute a clearly unwarranted invasion of the privacy of these individuals, and that it therefore may be withheld, pursuant to Exemption 6.

Roland Blackman, Attorney-Advisor in the Office of the Solicitor, was consulted in reaching this decision. Clarice Julka, Office of the Secretary FOIA Officer, is responsible for making this decision.

Appeal Rights

You may appeal this decision to the Department's FOIA Appeals Officer. The FOIA Appeals Officer must receive your FOIA appeal no later than 30 workdays from the date of this final letter responding to your FOIA request. Appeals arriving or delivered after 5 PM Eastern time, Monday through Friday, will be deemed received on the next workday. Your appeal must be in writing and addressed to:

FOIA Appeals Officer
U.S. Department of the Interior
1849 C Street, N.W., MS 6556
Washington, D.C. 20240

Fax: 202-208-6677

E-mail: FOIA.Appeals@sol.doi.gov

You must include with your appeal copies of all correspondence between you and the Office of the Secretary concerning your FOIA request, including a copy of your original FOIA request and the denial letter. Failure to include this documentation with your appeal will result in the Department's rejection of your appeal. All communications concerning your appeal, including envelopes, should be clearly marked with the words "FREEDOM OF INFORMATION APPEAL." Your letter should include in as much detail as possible any reason(s) why you believe the Office of the Secretary's response is in error. For more information on FOIA Administrative Appeals, you may review Subpart H of the Department's FOIA regulations, 43 C.F.R. Part 2, Subpart H.

Fees

Because your entitlements as a "media use request" (see 43 C.F.R. § 2.39) were sufficient to cover all applicable FOIA charges, there is no billable fee for the processing of this request.

For your information, Congress excluded three discrete categories of law enforcement and national security records from the requirements of the FOIA. See 5 U.S.C. § 552(c). This response is limited to those records that are subject to the requirements of the FOIA. This is a standard notification that is given to all our requesters and should not be taken as an indication that excluded records do, or do not, exist.

As part of the 2007 FOIA amendments, the Office of Government Information Services (OGIS) was created to offer mediation services to resolve disputes between FOIA requesters and Federal agencies as a non-exclusive alternative to litigation. Using OGIS services does not affect your right to pursue litigation. If you are requesting access to your own records (which is considered a Privacy Act request), you should know that OGIS does not have the authority to handle requests made under the Privacy Act of 1974. You may contact OGIS in any of the following ways:

Office of Government Information Services (OGIS)
National Archives and Records Administration
8601 Adelphi Road
College Park, MD 20740-6001
E-mail: ogis@nara.gov
Web: https://ogis.archives.gov
Telephone: 202-741-5769
Toll-free: 1-877-684-6448

This completes our partial response to your request. We will further respond to your request as additional records become available. If you have any questions about our response to your request, you may contact Kevin Lynch by phone at 202-513-0765, by fax at 202-219-2374, by email at os_foia@ios.doi.gov, or by mail at U.S. Department of the Interior, 1849 C Street, NW, MS-7328, Washington, D.C. 20240.

Sincerely,

Clarice Julka
Office of the Secretary
FOIA Officer

Enclosure

February 13, 2012

Ray McInerney
MS-116, SIB
1951 Constitution Ave, NW
Washington, DC 20240

FOIA REQUEST
Fee benefit requested
Fee waiver requested
Expedited review requested

Mr. McInerney:

Pursuant to the federal Freedom of Information Act, 5 U.S.C. § 552, I request access to and copies of all emails sent and received by Secretary Ken Salazar between April 20, 2010 (the date of the Deepwater Horizon rig explosion) and July 31, 2010. Please provide these documents in electronic format, if possible.

As a representative of the news media I am only required to pay for the direct cost of duplication after the first 100 pages. Through this request, I am gathering information on the government's response to the Gulf oil spill of 2010, a disaster has been followed closely around the world. This information is being sought on behalf of *Associated Press* for dissemination to the general public.

Please waive any applicable fees. Release of the information is in the public interest because it will contribute significantly to public understanding of government operations and activities. The records requested will be used to publish a story on the Associated Press wire, which provides news to more than 1 billion people around the world every day.

If my request is denied in whole or part, I ask that you justify all deletions by reference to specific exemptions of the act. I will also expect you to release all segregable portions of otherwise exempt material. I, of course, reserve the right to appeal your decision to withhold any information or to deny a waiver of fees.

As I am making this request as a journalist and this information is of timely value, I would appreciate your communicating with me by telephone, rather than by mail, if you have questions regarding this request. I certify that my statements concerning the need for expedited review are true and correct to the best of my knowledge and belief.

I look forward to your reply within 20 business days, as the statute requires.

Thank you for your assistance.

Sincerely,

Michael Kunzelman
The Associated Press
1515 Poydras Street, Suite 2500
New Orleans, LA 70112
504-523-3931
mkunzelman@ap.org

United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

IN REPLY REFER TO:
7202.4-OS-2013-00282

July 19, 2013

Robert Levin
Landmark Legal Foundation
19415 Deerfield Ave, Ste. 312
Leesburg, VA 20176

Dear Mr. Levin:

On July 17, 2013, you sent a Freedom of Information Act (FOIA) request seeking the following:

> Records evincing the use of any private or personal email account, text messaging service, instant messaging service, or any other private electronic communication, included but not limited to those sent via any social media service such as Facebook, Google Plus or other private platform, for the conduct of Agency business **from January 20, 2009 to July 15, 2013** Landmark limits its request to disclosure of the above described records for:
>
> 1. All **political appointees;**
> 2. All individuals serving in the **Senior Executive Service ("SES")** (whether those individuals are, or have served in, political or career positions) of the Agency;
> 3. Individuals in the **Office of the Administrator** (whether those individuals are, or have served in, political or career positions);
> 4. Individuals in the **Office of the Deputy Administrator** (whether those individuals are, or have served in, political or career positions);
> 5. Individuals in the **Office of the General Counsel** (whether those individuals are, or have served in, political or career positions).

Your request was received in the Office of the Secretary FOIA office on July 17, 2013, and assigned control number **OS-2013-00282.** Please cite this number in any future communications with our office regarding your request.

We have classified your request as an "other-use request." As an "other-use requester" you are entitled to up to 2 hours of search time and 100 pages of photocopies before being charged for the processing of FOIA requests. As a matter of policy, however, the Department of the Interior does not bill requesters for FOIA fees incurred in processing requests when their fees do not exceed $50.00, because the cost of collection would be greater than the fee collected. (See 43 C.F.R. §2.39, 2.49(a)(1)).

You have asked for a waiver of all FOIA processing fees. Please be advised that we are in the process of determining whether or not your entitlements are sufficient to enable us to process your request, or if we will need to issue a formal determination on your request for a fee waiver.

You have asked for copies of agency records. According to our regulations, you may choose the format of disclosure for such records. Unless you specify otherwise, the Office of the Secretary will provide copies of responsive records on a CD-ROM disk as scanned PDF images when the responsive records exceed 50 pages.

Because we will need to consult with one or more bureaus of the Department in order to properly process your request, the Office of the Secretary FOIA office is taking a 10-workday extension under 43 C.F.R. §2.19. For the same reason, we are placing your request under the "Complex" processing track. See 43 C.F.R. §2.15.

In the interim, if you have any questions regarding the status of your request, or any of the issues discussed in this letter, you may contact Cindy Sweeney by phone at 202-513-0765, by fax at 202-219-2374, by e-mail at os_foia@ios.doi.gov or by mail at U.S. Department of the Interior, 1849 C Street, NW, MS-7328 MIB, Washington, D.C. 20240.

Sincerely,

Clarice Julka
Office of the Secretary
FOIA Officer

LANDMARK
LEGAL FOUNDATION
THE RONALD REAGAN LEGAL CENTER

July 16, 2013

Bernard Mazer
Department of the Interior
Office of the Chief Information Officer
1849 C Street, NW
Suite 7456
Washington, DC 20240

VIA FEDERAL EXPRESS

National Freedom of Information Director
Department of the Interior (DOI)

Re. FREEDOM OF INFORMATION ACT REQUEST
AGENCY EMPLOYEE USE OF PRIVATE COMMUNICATION SERVICES

To Whom It May Concern:

This is a Freedom of Information Act ("FOIA") request pursuant to 5 U.S.C. Section 552 *et seq.* and 43 C.F.R. 2.8(a) (2012), relating to the use of private communication services for the conduct of official agency business by political appointees of the DOI.

Recent media reports raise the question as to the extent to which Executive Branch employees in the federal government are using private email, text messaging, instant messaging and other private communication services for the conduct of official government business. For example, at least two senior EPA officials were found to have used their private email accounts for the conduct of public business. C.J. Ciaramella, "EPA Official Resigns," *The Washington Free Beacon*, Feb. 19, 2013 (http://freebeacon.come/cpa-official=resigns/?print=1).

In addition, the House Committee on Oversight and Government Reform has revealed that more than a dozen Energy Department employees used private email accounts "to discuss decisions involving taxpayer-funded loans," in 2011 and 2012 – included loans made to and defaulted on by solar-panel maker Solyndra. Carol D. Leonnig and Joe Stephens, "Energy Dept. loan chief warned staff that personal e-mail could be subpoenaed," Aug. 14, 2012 (http://www.washingtonpost.com/politics/energy-department-loan-program-staffers-were-warned-not-to-use-personal-e-mail/2012/08/14/900621fa-e61f-11e1-8f62-58260e3940a0_story.html).

These incidents and many others like them that continue to be reported in the media raise very serious questions about a pattern and practice among the members of the Executive Branch to use private communication services in the conduct of official government business. In particular, the use of private services appears to be an intentional strategy employed to avoid the obligation attendant to the conduct of an open and transparent government. Moreover, these tactics appear designed to frustrate the purposes of the FOIA and the National Archives Records Act, 44 U.S.C. Section 2101, *et seq.*

Given the threat these practices pose to the Federal Government's commitment to openness and transparency, it is imperative that this FOIA request be given expedited processing. *See* Transparency and Open Government, Memorandum for the Heads of Executive Departments and Agencies, http://www.whitehouse.gov/the_press_office/TransparencyandOpenGovernment.

In addition, Landmark respectfully requests that it be granted a fee waiver.

I. Records Requested

Records evincing the use of any private or personal email account, text messaging service, instant messaging service, or any other private electronic communication, included but not limited to those sent via any social media service such as Facebook, Google Plus or other private platform, for the conduct of Agency business **from January 20, 2009 to July 15, 2013**

Landmark limits its request to disclosure of the above described records for:

1. All **political appointees**;

2. All individuals serving in the **Senior Executive Service ("SES")** (whether those individuals are, or have served in, political or career positions) of the Agency;

3. Individuals in the **Office of the Administrator** (whether those individuals are, or have served in, political or career positions);

4. Individuals in the **Office of the Deputy Administrator** (whether those individuals are, or have served in, political or career positions);

5. Individuals in the **Office of the General Counsel** (whether those individuals are, or have served in, political or career positions).

II. Fee Waiver & Expedited Processing

Landmark seeks a fee waiver and expedited processing of this request.

A. Fee Waiver

DOI regulations state:

> Records responsive to a request will be furnished without charge if certain criteria met. 43 CFR 2.19(a) (2012).

DOI regulations further provide that Bureaus will waive fees (in whole or in part) if disclosure of all or part of the information is in the public interest because its release-

> (1) Is likely to contribute significantly to public understanding of the operations or activities of the Government; and
>
> (2) Is not primarily in the commercial interest of the requester. 43 CFR 2.19(b)(1)-(2) (2012).

Landmark satisfies each of these factors.

1. Release of Requested Records is in the Public Interest.

News reports have indicated that political appointees at federal agencies have attempted to avoid conducting their official business in the open, and instead have taken deceptive measures to shield their activities from disclosure under the FOIA.

For example, former Environmental Protection Agency Administrator Lisa Jackson long used an official EPA email account under a fictitious name: Richard Windsor. (Exhibit 1, http://dailycaller.com/2013/04/10/lisa-jackson-speaks-candidly-on-secret-epa-email-account/#ixzz2YlIy31KZ.) The *Associated Press* has reported that employees at the Labor Department and Health and Human Service (HHS) have also used alias emails. (Exhibit 2, Jack Gillum, Associated Press, "Emails of top Obama appointees remain a mystery," http://apnews.myway.com/article/20130604/DA6MPFHG2.html.) Furthermore, the *Daily Caller* reported in June, 2013 that the Secretary of Agriculture had used an alias email in correspondence with EPA Administrator Lisa Jackson's alias email.

> Secretary of Agriculture Tom Vilsack used a secret, nonpublic email account to communicate with the secret email account of former EPA administrator Lisa Jackson which used the fake name Richard Windsor.
>
> A 2009 email exchange between Jackson's alias account and Vilsack reveal that the Agriculture Secretary was using an account "jd@osec.usda.gov." (Exhibit 3, http://dailycaller.com/2013/06/06/agriculture-secretary-also-used-a-secret-email-account/)

Accordingly, there appears clearly to be a pattern or practice throughout the Executive Branch for the use of clandestine email addresses by senior Obama Administration political appointees. Landmark submits this FOIA request to DOI in order to educate the public as to the extent to which the DOI engages in this practice.

The FOIA requires the DOI to waive fees when disclosure of the requested record is in the public interest. 5 U.S.C. § 552(a)(4)(A)(iii), Long v. BATF, 964 F. Supp.494, 498 (D.D.C.

1997). Further, "the amended statute 'is to be liberally construed in favor of waivers for noncommercial requesters.'" McClellan Ecological Seepage Situation v. Carucci 835 F.2d 1282, 1284 (9th Cir. 1987), quoting 132 Cong. Rec. SS-14298 (Sept. 30, 1986) (statement of Sen. Leahy). Senator Leahy went on to explain that the 1986 amendment's purpose was "to remove the roadblocks and technicalities which have been used by various federal agencies to deny waiver or reduction of fees under FOIA." 132 Cong. Rec. S-16496 (Oct. 15, 1986).

As stated above, the DOI has set forth two factors to determine whether a release of requested records is in the public interest. Landmark satisfies each of these factors.

1. Whether the disclosure is "likely to contribute significantly to public understanding of the operation or activities of the Government"

The disclosure of the records sought will contribute to the public's knowledge of the process by which DOI employees first set up accounts as well as the extent of the use of accounts in fictitious names or aliases. This has obviously not been made available to the public. In fact, it has been willfully kept from the public. Notably, even in an instance where Congress has demanded release of information, federal agencies have been slow to respond. The release of records showing that DOI employees are creating private accounts would help shed light on government activities that aren't conducted in public view. This would undoubtedly contribute to an understanding of government operation or activities.

The disclosure of the requested information will contribute to the public understanding of the DOI's operations as a result of Landmark's long record of educating the public with information gathered through FOIA requests.

Upon receipt of this information, Landmark will promptly analyze and disseminate the requested material. Landmark will take several steps, among others, to ensure that the public has access to the information, thus ensuring that the information will contribute to the "public understanding" of the DOI's conduct and operations:

1. Landmark will post responsive information on its web site (www.landmarklegal.org), which is accessed regularly by thousands of individuals and makes the information available to potentially millions of citizens;

2. Landmark will utilize its extensive contacts in radio broadcasting to ensure proper public dissemination of requested records;

3. Landmark will include the information in its newsletter, which is distributed to thousands of individuals, groups, and the media;

4. Landmark will disseminate the information via its widespread distribution technology, which reaches hundreds of media outlets, reporters, editorial writers, commentators and public policy organizations;

5. Landmark staff will use the information to publish articles in print media, many of which are widely circulated. Landmark has successfully published such numerous articles in the past;

6. Landmark will issue press releases to specific media outlets; and

7. Landmark staff will appear on television and radio programs.[1]

Landmark has a proven record of ensuring that information it receives pursuant to FOIA requests garners widespread attention in print, electronic and broadcast media. Landmark's investigations have been cited by the *Associated Press*, *The Wall Street Journal*, *The Washington Post*, *The Washington Times*, and the Fox News Channel.

The disclosure of the records requested will contribute significantly to the public understanding of government operations or activities. The use of email accounts concealed from public view or access to conduct official business is clearly designed to prevent public understanding of government operations or activities. It is possible that political appointees have been avoiding their obligation to conduct official government business in the open through the use of secret email accounts. Indeed, if individuals within the DOI secretly discussed their regulatory plans with outside groups, the general public would have great interest in such information and would have a significantly greater understanding of the DOI's true activities. Disclosure could demonstrate that the DOI has shielded its true policy intentions from public view.

Landmark clearly satisfies each of these factors. Consequently, disclosure of the requested materials is in the public interest.

2. Disclosure of Requested Material is Not in Landmark's Commercial Interest.

In order for a fee waiver to be granted, the disclosure of the requested material must not primarily be in the commercial interest of the requester. 43 CFR 2.19(b)(2) (2012).

Landmark does not have any commercial interest in the release of the requested records. Obtaining, analyzing, and disseminating this information is consistent with Landmark's mission to educate the public concerning the activities of federal agencies. Landmark has no commercial interest of any kind, nor can it as a 501(c)(3) public interest non-profit organization.

B. Landmark's Request Should Receive Expedited Processing.

In order to receive expedited process, a FOIA request must show a "compelling need" by either: (1) establishing that the failure to obtain the records quickly could reasonably be expected to pose an imminent threat to the life or physical safety of an individual; or (2) if you are a

[1] See Judicial Watch, Inc. v. Rosotti, 326 F.3d 1309, 1314 (D.C. Cir. 2003). Here, the Court determined that an entity who provided "nine ways in which it communicates collected information to the public" sufficiently justified how disclosure would contribute to the public's understanding as to the activities of the federal government.

person primarily engaged in disseminating information, by demonstrating that an urgency to inform the public that actual or alleged Federal Government activity. 43 CFR 2.14 (a)(1)-(2) (2012).

1. There is a Compelling Need For Public Disclosure of the Requested Records.

There is a compelling need for the immediate release of the information requested. With respect to entities "primarily engaged in disseminating information," a compelling need is demonstrated by an "urgency to inform the public concerning actual or alleged Federal Government activity." 5 U.S.C. Section 552(a)(6)(E)(v)(II). Among the factors to be considered as to whether there is a compelling need are "(1) whether the request concerns a matter of current exigency to the American public; (2) whether the consequences of delaying a response would compromise a significant recognized interest; and (3) whether the request concerns federal government activity." ACLU, 321 F.Supp.2d at 29.

The requested records related directly to several matters of tremendous public interest and debate as shown by the attached exhibits. The political appointees at senior levels across the Obama Administration appear to have engaged in an Administration wide practice of using email addresses concealed from public view or access to shield their activities from public scrutiny. This raises the possibility that the Obama Administration has improperly politicized federal agencies and the possibility that the DOI leadership is intentionally concealing its regulatory activity from an unwary public. Each one of these issues is a matter for immediate and full disclosure.

There are many significant public interests implicated in the possibility that the DOI's activities have been politicized. The health and wellbeing of the public as well as the economic wellbeing of the country are at stake with improper regulation. Delay puts these at risk and prevents the American public from being able to engage in timely, thoughtful debate over the extent of regulation and the management of the federal government. Furthermore, the federal government has shown itself incapable of responding quickly to address this issue, as the EPA IG's example attests. In short, Landmark meets the factors for a compelling need.

2. Landmark is Primarily Engaged in Disseminating Information.

As part of its mission as a tax-exempt, public interest law firm, Landmark investigates, litigates and *publicizes* instances of improper and/or illegal government activity. As stated above, Landmark will take various steps to disseminate responsive information to the public. Specifically, Landmark will post information on its web site; include the information in its newsletters; disseminate information via various widespread distribution technologies; publish articles in large circulation print media; and issue press releases to a wide range of media outlets.

Moreover, Landmark's work is regularly reported on in national print, broadcast and electronic media outlets, including the *Washington Post, Washington Times, The New York Times, Wall Street Journal,* and many other national publications. Landmark's work is often

discussed on national radio talk shows. Landmark's only purpose in seeking this information, furthermore, is to disseminate such information to the public.

Landmark has thousands of supporters throughout the United States who are regularly informed through newsletters and other correspondence of the Foundation's activities. Landmark exists only through the donations received from the general public and does not accept any government funds. Accordingly, Landmark must disseminate information about its activities to the general public in order to function.

In Elec. Privacy Info. Ctr. v. DOD, 241 F. Supp. 2d 5 (D.D.C. 2003), the D.C. District Court found that a public interest group was "primarily engaged in disseminating information" for purposes of the FOIA. The court reasoned that he group "gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw material into a distinct work, and distributes that work to an audience." Elec. Privacy Info. Ctr. v. DOD, 241 F. Supp. 2d 5, 11 (D.D.C. 2003)(citing National Sec. Archive v. U.S. Dep't of Defense, 880 F.2d 1381, 1387 (D.C. Cir. 1989).

As noted on Landmark's website, "Among Landmark Legal Foundation's primary activities is to disseminate to the public information about the conduct of governmental agencies and public officials that runs afoul of constitutional limits or ethical standards." Landmark gathers information of potential interest to the public, especially those with a conservative viewpoint, analyzes the information, and then creates a report or summary of that information which it distributes to Landmark's audience through newsletters, reports, and its webpage. Landmark's audience includes its supporters, including official advisors, news media, visitors to its website and the general public when Landmark officials discuss the information in print, television and radio.

Please note Landmark has previously been involved in extensive litigation arising from a governmental agency's failure to properly produce documents in accordance with its obligations under the FOIA. See Landmark Legal Foundation v. Environmental Protection Agency, 272 F.Supp.2d 70 (D.D.C. 2003). In that case, the EPA destroyed records in violation of a preliminary injunction and failed to properly circulate Landmark's Request to relevant departments within the EPA. Consequently, the EPA was found in civil contempt of court. Landmark fully expects the DOI to fully comply with the legal mandates set forth in the FOIA.

If Landmark's FOIA Request is not expedited, the potential exists for spoliation of evidence that could demonstrate improper DOI conduct. Expediting Landmark's Request will allow Landmark – and the public – to understand an issue of national interest. Furthermore, please provide assurances that DOI officials are taking steps to prevent destruction of repositories of information that may hold records responsive to this request. Additionally, be aware that any actions taken in contravention of the DOI's responsibilities will be raised if this request becomes the subject of litigation.

III. Conclusion

If you intend to deny this request in whole or in part, Landmark requests that you provide specific and substantive justifications with full citation to applicable exemptions and supporting case law.

Please also note that Landmark realizes that the DOI considers requests for fee waivers on a case-by-case basis, Landmark has successfully litigated the issue of whether it qualifies for a fee waiver in federal court.

For the reasons stated above, Landmark asks that the DOI grant Landmark's requests for a fee waiver and for expedited processing. You may contact Robert Levin at (703) 554-6100 if you have any questions. Please deliver responsive records to Mr. Levin's attention at the following address:

Robert Levin
Landmark Legal Foundation
19415 Deerfield Ave.
Suite 312
Leesburg, VA 20176

Certification

Pursuant to DOI regulations and as required by law, I certify, to the best of my knowledge, that the above facts are true and correct.

Michael J. O'Neill
Assistant General Counsel
Landmark Legal Foundation

- The Daily Caller - http://dailycaller.com -

Lisa Jackson speaks candidly on secret EPA email account

Posted By Michael Bastasch On 1:15 PM 04/10/2013 In Daily Caller News Foundation | No Comments

Former Environmental Protection Agency Administrator Lisa Jackson spoke candidly about the controversial secret email account, "Richard Windsor," she was using during her tenure as the top environmental regulator in the country.

Jackson spoke before an audience at an event called "The Unfinished Business of the Environmental Movement" at Princeton University. The talk mainly revolved around issues in the environmental movement and what issues it needs to tackle going forward, but one student asked Jackson about her use of an alias email account.

Jackson said an internal email account was necessary due to the high volume of emails her public account gets every year, and she swayed by career staff to pick a name that was not her own. Combining the name of her dog Ricky and the East Windsor Township in New Jersey, she came up with the alias name "Richard Windsor."

"It is not an unofficial account. The account is 'Windsor.richard@epa.gov,'" Jackson said. "When we got to EPA, I said let's make it 'admjackson@epa.gov,' and the career staff, who work there, advised ... that that shouldn't be done, because we have a searchable database, and what would happen is people would search it, find it, and start using it."

"So, that's why we did it, just like the guy before me did it — a Republican — and what the woman before him may have done, I have no idea what she did," she added.

"So it's not unofficial," Jackson said. "And I get very angry at the way politics is done, because you can put that up there — not you personally, I don't know, maybe you did ... so then that becomes that I set up an email — so you take a fact, which is true, that I had another email account."

Jackson also said that she endlessly told people to search for Richard Windsor emails when using a Freedom of Information Act request to get agency information and records.

"After 25 years in public service, I have people accusing me on both sides of doing something unethical to hide information," she said. "And I have endless times when I've said to people, 'Make sure when you're searching for FOIA information you search the Richard Windsor account.'"

Jackson came under fire after Competitive Enterprise Institute senior fellow Chris Horner told the Daily Caller News Foundation that two EPA officials confirmed to him that she was using an account under the name Richard Windsor. A lawsuit from CEI has forced the EPA to turn over thousands of emails between Jackson's alias account and other agency officials.

"As to this notion that it was widely known that Richard Windsor was Jackson's false identity for EPA emailing, that is preposterous," Horner told The Daily Caller News Foundation. "We see emails from many high-ranking EPA officials sent not to Windsor but to Lisa Jackson's account in her name; we have dozens of them proving that in fact the false identity was known only to a select, small group of insiders for certain communications."

Jackson's alias account also piqued the interest of congressional Republicans who began to question Jackson, and other agency officials, on the use of alias and private email accounts to conduct official business.

"Do I regret naming it [that]?" Jackson said at Princeton. "I wish that I had stuck with my original inclination and just left it 'admjackson,' although I'm sure somebody would have decided that that was too obscure as well, but you take that and then you assign a motive to it."

"But the difference between fact and ascription of motive is the most base form of our politics. And as policy students, I certainly hope that's the one thing you know besides [unintelligible]," she said.

Jackson announced she would leave the Obama administration last December, saying that she wished to spend time with her family and pursue other opportunities.

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Emails of top Obama appointees remain a mystery

Email this Story

Jun 4, 3:31 AM (ET)

By JACK GILLUM

WASHINGTON (AP) - Some of President Barack Obama's political appointees, including the Cabinet secretary for the Health and Human Services Department, are using secret government email accounts they say are necessary to prevent their inboxes from being overwhelmed with unwanted messages, according to a review by The Associated Press.

The scope of using the secret accounts across government remains a mystery: Most U.S. agencies have failed to turn over lists of political appointees' email addresses, which the AP sought under the Freedom of Information Act more than three months ago. The Labor Department initially asked the AP to pay more than $1 million for its email addresses.

The AP asked for the addresses following last year's disclosures that the former administrator of the Environmental Protection Agency had used separate email accounts at work. The practice is separate from officials who use personal, non-government email accounts for work, which generally is discouraged - but often happens anyway - due to laws requiring that most federal records be preserved.

The secret email accounts complicate an agency's legal responsibilities to find and turn over emails in response to congressional or internal investigations, civil lawsuits or public records requests because employees assigned to compile such responses would necessarily need to know about the accounts to search them. Secret accounts also drive perceptions that government officials are trying to hide actions or decisions.

"What happens when that person doesn't work there anymore? He leaves and someone makes a request (to review emails) in two years," said Kel McClanahan, executive director of National Security Counselors, an open government group. "Who's going to know to search the other accounts? You would hope that agencies doing this would keep a list of aliases in a desk drawer, but you know that isn't happening."

Agencies where the AP so far has identified secret addresses, including the Labor Department and HHS, said maintaining non-public email accounts allows senior officials to keep separate their internal messages with agency employees from emails they exchange with the public. They also said public and non-public accounts are always searched in response to official requests and the records are provided as necessary.

The AP couldn't independently verify the practice. It searched hundreds of pages of government emails previously released under the open records law and found only one instance of a published email with a secret address: an email from Labor Department spokesman Carl Fillichio to 34 coworkers in 2010 was turned over to an advocacy group, Americans for Limited Government. It included as one recipient the non-public address for Seth D. Harris, currently the acting labor secretary, who maintains at least three separate email accounts.

Google can't find any reference on the Internet to the secret address for HHS Secretary Kathleen Sebelius. Congressional oversight committees told the AP they were unfamiliar with the non-public government addresses identified so far by the AP.

Ten agencies have not yet turned over lists of email addresses, including the Environmental Protection Agency; the Pentagon; and the departments of Veterans Affairs, Transportation, Treasury, Justice, Housing and Urban Development, Homeland Security, Commerce and Agriculture. All have said they are working on a response to the AP.

White House spokesman Eric Schultz declined to comment.

A Treasury Department spokeswoman, Marissa Hopkins Secreto, referred inquiries to the agency's FOIA office, which said its technology department was still searching for the email addresses. Other departments, including Homeland Security, did not respond to questions from the AP about the delays of nearly three months. The Pentagon said it may have an answer by later this summer.

The Health and Human Services Department initially turned over to the AP the email addresses for roughly 240 appointees - except none of the email accounts for Sebelius, even one for her already published on its website. After the AP objected, it turned over three of Sebelius' email addresses, including a secret one. It asked the AP not to publish the address, which it said she used to conduct day-to-day business at the department. Most of the 240 political appointees at HHS

appeared to be using only public government accounts.

The AP decided to publish the secret address for Sebelius - KGS2(at)hhs.gov - over the government's objections because the secretary is a high-ranking civil servant who oversees not only major agencies like the Centers for Medicare and Medicaid Services but also the implementation of Obama's signature health care law. Her public email address is Kathleen.Sebelius(at)hhs.gov.

At least two other senior HHS officials - including Donald Berwick, former head of the Centers for Medicare and Medicaid Services, and Gary Cohen, a deputy administrator in charge of implementing health insurance reform - also have secret government email addresses, according to the records obtained by the AP.

The Interior Department gave the AP a list of about 100 government email addresses for political appointees who work there but none for the interior secretary at the time, Ken Salazar, who has since resigned. Spokeswoman Jessica Kershaw said Salazar maintained only one email address while serving as secretary but she would not disclose it. She said the AP should ask for it under the Freedom of Information Act, which would take months longer.

The Labor Department initially asked the AP to pay just over $1.03 million when the AP asked for email addresses of political appointees there. It said it needed pull 2,236 computer backup tapes from its archives and pay 50 people to pore over old records. Those costs included three weeks to identify tapes and ship them to a vendor, and pay each person $2,500 for nearly a month's work. But under the department's own FOIA rules - which it cited in its letter to the AP - it is prohibited from charging news organizations any costs except for photocopies after the first 100 pages. The department said it would take 14 weeks to find the emails if the AP had paid the money.

Fillichio later acknowledged that the $1.03 million bill was a mistake and provided the AP with email addresses for the agency's Senate-confirmed appointees, including three addresses for Harris, the acting secretary. His secret address was harris.sd(at)dol.gov. His other accounts were one for use with labor employees and the public, and another to send mass emails to the entire Labor Department, outside groups and the public. The Labor Department said it did not object to the AP publishing any of Harris' email addresses.

In addition to the email addresses, the AP also sought records government-wide about decisions to create separate email accounts. But the FOIA director at HHS, Robert Eckert, said the agency couldn't provide such emails without undergoing "an extensive and elongated department-wide search." He also said there were "no mechanisms in place to determine if such requests for the creation of secondary email accounts were submitted by the approximately 242 political appointees within HHS."

Late last year, the EPA's critics - including Republicans in Congress - accused former EPA Administrator Lisa Jackson of using an email account under the name "Richard Windsor" to sidestep disclosure rules. The EPA said emails Jackson sent using her Windsor alias were turned over under open records requests. The agency's inspector general is investigating the use of such accounts, after being asked to do so by Congress.

An EPA spokeswoman described Jackson's alternate email address as "an everyday, working email account of the administrator to communicate with staff and other government officials." It was later determined that Jackson also used the email address to correspond sometimes with environmentalists outside government and at least in some cases did not correct a misperception among outsiders they were corresponding with a government employee named Richard Windsor.

Although the EPA's inspector general is investigating the agency's use of secret email accounts, it is not reviewing whether emails from Jackson's secret account were released as required under the Freedom of Information Act.

The EPA's secret email accounts were revealed last fall by the Competitive Enterprise Institute, a conservative Washington think tank that was tipped off about Jackson's alias by an insider and later noticed it in documents it obtained the FOIA. The EPA said its policy was to disclose in such documents that "Richard Windsor" was actually the EPA administrator.

Courts have consistently set a high bar for the government to withhold public officials' records under the federal privacy rules. A federal judge, Marilyn Hall Patel of California, said in August

2010 that "persons who have placed themselves in the public light" - such as through politics or voluntarily participation in the public arena - have a "significantly diminished privacy interest than others." Her ruling was part of a case in which a journalist sought FBI records, but was denied.

"We're talking about an email address, and an email address given to an individual by the government to conduct official business is not private," said Aaron Mackey, a FOIA attorney with the Reporters Committee for Freedom of the Press. He said that's different than, for example, confidential information, such as a Social Security number.

Under the law, citizens and foreigners may use the FOIA to compel the government to turn over copies of federal records for zero or little cost. Anyone who seeks information through the law is generally supposed to get it unless disclosure would hurt national security, violate personal privacy or expose business secrets or confidential decision-making in certain areas.

Obama pledged during his first week in office to make government more transparent and open. The nation's signature open-records law, he said in a memo to his Cabinet, would be "administered with a clear presumption: In the face of doubt, openness prevails."

Contact the Washington investigative team at DCinvestigations(at)ap.org. Follow Jack Gillum on Twitter at http://twitter.com/jackgillum

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Agriculture secretary also used a secret email account

Posted By Michael Bastasch On 2:32 PM 06/06/2013 In Daily Caller News Foundation | No Comments

Add the secretary of agriculture to the list of senior Obama administration officials using secret email accounts to conduct official business.

The Associated Press revealed this week that this is a common practice within the administration, which some argue is a way for officials to avoid federal transparency laws.

The AP reported that the heads of the the Department of Labor and the Department of Health and Human Services used secret email addresses for internal communication, which has been criticized as a way for administration officials to skirt public oversight.

Previously FOIAed emails from the Environmental Protection Agency show that Secretary of Agriculture Tom Vilsack used a secret, nonpublic email account to communicate with the secret email account of former EPA administrator Lisa Jackson which used the fake name Richard Windsor.

A 2009 email exchange between Jackson's alias account and Vilsack reveal that the Agriculture Secretary was using an account "jd@osec.usda.gov." The email between Vilsack and Jackson is almost completely redacted, but the subject line reads: "Daily Climate Change Talking Points–COP 15."

On Tuesday, White House press secretary Jay Carney acknowledged the use of secret email accounts within the Obama administration, arguing that it made sense for high-level officials to use alternate email accounts to keep their inboxes from being flooded with emails and spam. Carney also said that such emails are subject to government records requests and congressional oversight.

"There's nothing secret," Carney told reporters.

However, the AP notes that it "reviewed hundreds of pages of government emails released under the federal open records law and couldn't independently find instances when material from any of the secret accounts it identified was turned over." Furthermore, the AP reported that congressional oversight committees said they were not familiar with the secret email accounts obtained by the AP.

Congress also expressed surprise at reports that former EPA administrator Lisa Jackson was using an alias email account to conduct official business. Congressional investigations followed and the EPA inspector general even began an investigation into agency records practices.

Last year The Daily Caller News Foundation reported that Jackson was using the Richard Windsor account to conduct official business. It was subsequently revealed by Louisiana Republican Sen. David Vitter that Jackson had used her alias account to correspond with environmental groups.

"While the president promised transparency, he and the people he chose to lead various sections of his administration are very clearly failing to deliver," Vitter told The DC News Foundation in an emailed statement.

"The release of the infamous 'Richard Windsor' email alias documents has led to the discovery of even more, widespread inappropriate record-keeping practices within the EPA and multiple other Agencies," he added. "At the end of the day this is about the president's leadership, and thus failure to deliver on yet another promise."

The USDA did not respond to The DC News Foundation's request for comment.

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