January 29, 2019

VIA ELECTRONIC MAIL

Cindy Cafaro  
Office of Executive Secretariat and Regulatory Affairs  
Department of the Interior  
1849 C Street NW  
Washington, DC 20240  
www.regulations.gov


Dear Executive Secretariat Cafaro:


Interior’s Proposed Rule revisions are problematic because they would make it easier for Interior and its bureau agencies to deny and delay responding to requests for public records under FOIA, thereby blocking the public’s access to agency records that concern our public lands and wildlife.

The language of the Proposed Rule illegally expands Interior’s discretion to block access to records through FOIA, deny fee waiver requests, and deny requests to expedite the processing of records about breaking news stories and matters of significant interest to the public. Emblematic of Interior’s recent efforts to undermine FOIA and public access to records, the Proposed Rule opens the door for political and commercial interests to block meaningful engagement by the American public and science community, thus shielding Interior from scrutiny and accountability. Even setting aside the unprecedented and illegal rollbacks contained in the draft rule, Interior’s public comment process has been woefully inadequate to facilitate meaningful participation and engagement.

Thus, for the reasons discussed below, we request that Interior withdraw the Proposed Rule.
I. **Interior’s Rulemaking Process and Rationale for the Proposed Rule are Improper.**

Interior’s reasons for the Proposed Rule and the rulemaking process itself are highly suspect. Interior published the Proposed Rule on December 28, 2018, the Friday between Christmas and New Year’s Eve when many Americans were taking time off, and during a government shutdown that began at midnight on December 21, 2018.\(^1\) 83 Fed. Reg. 67,175 (Dec. 28, 2018). Interior did not publish any press releases about the Proposed Rule, and designated agency contacts were either unavailable during the shutdown to answer questions or declined to do so. Publishing the Proposed Rule initiated a 30-day comment period that was set to end on January 29, 2019.\(^2\) Interior extended the comment period by one day to January 29, 2019, due to “a technical glitch on regulations.gov.” 84 Fed. Reg. 409 (Jan. 28, 2019). Considering the scope and complexity of this Proposed Rule and the circumstances under which it was published, a 31-day public comment period is inadequate. Under comparable circumstances, Interior has generally provided at least the “usual 60 days” for comments and regularly grants requests for extensions of time.\(^3\) \(^3\) The 31-day public comment period initiated in between the Christmas and New Year’s holidays and during a government shut-down is inadequate to ensure meaningful public participation in the rulemaking process.

Interior’s framing of the Proposed Rule as an attempt to make its FOIA process more efficient and decrease litigation is more than a stretch. Interior points to an “unprecedented surge in FOIA requests and litigation” as an impetus for the Proposed Rule, citing a 30 percent increase in FOIA requests over the past two years and the agency’s difficulty in responding due to resource constraints. However, if promulgated, the vague language of the Proposed Rule will surely enmire the agency in more bureaucracy and litigation. Moreover, any increases in FOIA requests and litigation have resulted from Interior delaying and denying FOIA requests, and

---

\(^{1}\) Office of the Federal Register procedures designed to ensure compliance with the Anti-Deficiencies Act during a government shut-down provide that only “documents directly related to the performance of governmental functions necessary to address imminent threats to the safety of human life or protection of property” be published. Office of the Federal Register, Publication Procedures for Federal Register Documents During a Funding Hiatus, 83 Fed. Reg. 63,540 (Dec. 10, 2018).

\(^{2}\) The Center and many other groups signed on to WildEarth Guardians’ letter requesting an extension of the comment period due to the government shutdown and requesting a public hearing on the Proposed Rule. Attachment A (Letter from WildEarth Guardians to Department of Interior (January 14, 2019)). Interior has not responded to the letter.

\(^{3}\) See, e.g., Application and Permit Information Requirements; Permit Eligibility; Definitions of Ownership and Control; the Applicant/Violator System; Alternative Enforcement Actions, 63 Fed. Reg. 70,580 (Mar. 21, 1998) (providing the “usual 60 days” to comment). Indeed, in its 2016 revision of the FOIA regulations, the Department provided 60 days for comment. Freedom of Information Act Regulations, 81 Fed. Reg. 11,124 (Mar. 3 2016); see also Resource Management Planning, 81 FR 89580-01 (Dec. 12, 2016) (90 day formal comment period); Waste Prevention, Production Subject to Royalties, and Resource Conservation, 81 Fed. Reg. 19,110 (Apr. 4, 2016) (60 days); Waste Prevention, Production Subject to Royalties, and Resource Conservation; Rescission or Revision of Certain Requirements, 83 Fed. Reg. 49,184 (Sept. 28, 2018) (60 days).
undermining FOIA itself by signing secretive orders and decrees rather than going through transparent, open processes.

Interior’s Proposed Rule deprives the American people of their right to know what the government is doing, see U.S. Dep’t of Justice v. Reporters Comm. for Freedom of Press, 489 U.S. 749, 773 (1989) (FOIA gives the public the right to know “what their government is up to”), and the agency is only going to invite more litigation as a result.

As discussed more fully below, these revisions will not, in fact, improve efficiency at Interior, but rather confuse and politicize what was once a fairly straightforward and nonpartisan process. Thus, because Interior’s rationale for the Proposed Rule is belied by longstanding practice and because the rulemaking process itself does not allow the public adequate opportunity for notice and comment, we ask that Interior withdraw its Proposed Rule.

II. The Proposed Rule Undermines Transparency and Efficiency by Politicizing the Interior Department’s FOIA Process.

Sections 2.2, 2.20, 2.23, and 2.24 of Interior’s Proposed Rule consolidate FOIA decisionmaking to a political appointee, the Solicitor of the Interior, and the newly formed Deputy Chief FOIA Officer. Accordingly, the proposed rules remove expertise at the bureau level, adding politically driven bureaucratic steps to Interior's severely backlogged and delayed FOIA process. For example, the proposed rules allow the Solicitor to preapprove certain withholdings. See infra at 7. Additionally, Interior’s proposed rules would require each bureau to consult with the Office of the Solicitor before granting expedited processing on a request. See id. Adding this extra step in the review process not only further delays Interior’s processing of FOIA requests, but also unnecessarily politicizes the agency’s response to requests for expedited processing.

The proposed rules are also particularly problematic when coupled with Secretarial Order 3371. Attachment B. Signed by former Interior Secretary Zinke on November 20, 2018, Secretarial Order 3371 reassigned FOIA oversight responsibilities from bureau-level career employees to the Solicitor of the Interior, designating the Solicitor as the Chief FOIA Officer.4

Although Secretarial Order 3371 also created the new position of Deputy Chief FOIA Officer, the description of the position is vague, and it lacks any detail about how the position will be filled. The Deputy Chief FOIA Officer will oversee all aspects of the Department’s FOIA program and will be able to “assume control over any aspect of any FOIA request in the Department,” except requests directed to the Office of the Inspector General. The Deputy Chief FOIA Officer reports directly to the Solicitor and is responsible for developing FOIA policies, procedures, and practices, as well as directing FOIA program activities throughout the Department. The Deputy Chief FOIA Officer will also manage and utilize the newly formed FOIA Assistance Coordination Team (“FACT”) to “provide strategic direction for selected FOIA requests that impact Department-level interests.” In so doing, the Deputy Chief FOIA Officer’s

---

4 Formerly, the chief FOIA officer for the Department of the Interior was the Chief Information Officer, a career position that was, by its nature, removed from political influence.
management and utilization of the FACT could enable political operatives to prevent important scientific information from reaching the American people.

This politically driven, industry-serving position goes entirely against the purpose of FOIA. Letting just one person—the Deputy Chief FOIA Officer—be the gatekeeper of crucial information about Interior activities and whether they impact our wildlife and public lands is a clear attempt by Interior to block enforcement of environmental laws in favor of industry and special interests. Public records that may open Interior or big polluters to criticism will be covered up, and our public lands and wildlife will suffer. If the Deputy Chief FOIA Officer is an appointed position it will further exacerbate these concerns.

However, even if not, Interior’s proposed rules would still have the effect of reducing the value of bureau-level FOIA expertise and result in a severely truncated institutional memory about FOIA policies and practices due to the frequency of political turnover in the Solicitor’s Office. Career bureau-level FOIA staff are on the front lines of issues that impact wildlife and public lands and, thus, have more intimate knowledge about agency records related to the issues. Moreover, bureau FOIA staff have specialized experience with FOIA that spans presidents and political regimes. Housing the FOIA responsibilities within one single position will drastically reduce the efficiency of Interior’s FOIA program by eliminating this bureau-level expertise.

These concerns are even more urgent against the current political backdrop. The President has not nominated anyone to be the Solicitor of the Interior, a position which requires Senate confirmation. Interior continues to act through unilateral actions rather than open processes while the American people profoundly disagree with its extreme anti-environmental agenda. We are concerned that these proposed rules would allow Interior to operate in the shadows, denying public access to information that would reveal undue influence over government actions.


The Proposed Rule eliminates important procedures that streamline Interior’s FOIA process. Indeed, the vague language of the Proposed Rule further confuses Interior’s FOIA decisionmaking. For one, section 2.3 of the Proposed Rule eliminates the public’s ability to submit FOIA requests by email. This change will not only threaten the ability to access public records, but it will also create uncertainty about the date that the agency receives the FOIA request, thereby initiating FOIA’s statutory determination deadline. 5 U.S.C. § 552(a)(6)(A)(ii).

Section 2.66 of the Proposed Rule limits a FOIA requester’s ability to consistently communicate with an individual FOIA officer regarding a request. Rather than being able to communicate with an actual bureau FOIA staff person, all communications would be routed through newly created FOIA Requester Centers. Although section 2.66 is titled “What are FOIA Requester Centers and the FOIA Public Liaison?” the section never actually describes these FOIA Requester Centers, whether they will be specific to each bureau, how they will be staffed, or other details about their structure or function.

Further confounding Interior’s FOIA process, revisions to Sections 2.3 and 2.4 of the Proposed Rule eliminate language requiring Interior’s bureau agencies to forward misdirected requests to the appropriate agencies. It has been standard practice for an Interior bureau agency to fulfill its obligation to help the public by forwarding the request to the appropriate bureau if a requester sent a FOIA request to one agency, but the request was more appropriately targeted to another Interior bureau agency. Under the Proposed Rule, a requester must be sure to address a request to the correct bureau agency every time, or else be denied.

Section 2.5 of the Proposed Rule would require a FOIA requester to “identify the discrete, identifiable agency activity, operation, or program in which you are interested.” This revision would violate FOIA’s provision that a request need only “reasonably describe” the records being sought. 5 U.S.C. § 552(a)(3)(A). This would impermissibly burden requesters by requiring specificity in request descriptions rather than placing the onus on the agency to broadly interpret FOIA requests. This change would also undermine the purpose of FOIA by perpetuating secrecy because it will enable the agency to withhold even more records, as requesters often lack information about agency activities, operations, record custodians, or programs—information that the very records sought would necessarily inform.

This revision offends Congress’s intent that the limited instruction to “reasonably describe” records affords requesters considerable leeway. The Proposed Rule also flouts legal standards, as courts have made clear that agencies must liberally construe the language of FOIA requests. See, e.g. LaCedra v. Exec. Office for U.S. Attys., 317 F.3d 345, 348 (D.C. Cir. 2003) (citations omitted) (the Department of Justice must “construe a FOIA liberally” in spite of the fact that the request was “not a model of clarity”). The U.S. Department of Justice has further acknowledged that if a requester seeks records related to a matter that is not publicly known, it is understandable to lack specificity in the request language.

---

7 See S. Rep. No. 89-813, at 43 (1965) (a request must only include as much information as would “enable[] the Government employee to locate the requested records.”); H.R. Rep. No. 93-876, at 125-126 (1974) (“[a] ‘description’ of a requested document would be sufficient if it enabled a professional employee of the agency who was familiar with the subject area of the request to locate the record with a reasonable amount of effort.”); S. Rep. No. 93-854 at 162 (1974); see also 119 Cong. Rec. 13,686 (1973) (extended remarks of Hon. John E. Moss) (“any request describing the material to a manner that a government official familiar with the area could understand is sufficient criteria for identification purposes.”).
8 Dep’t of Justice, Office of Info. Privacy, FOIA Update, Vol. XVI, No. 3 (1995) (“FOIA requesters … often phrase their requests in very broad and all-encompassing terms, with the primary purpose of including any and all records pertaining to the subject or subjects in which they are interested. It is only natural for FOIA requesters to be concerned that records of interest to them might not be included by an agency as responsive to their FOIA requests. Especially when they are operating ‘in the dark,’ FOIA requesters tend to sweep broadly in their requests for fear that doing otherwise might unintentionally limit their requests and exclude something that they actually to seek to obtain.” (emphasis added)).
Thus, if Interior implements the revisions to section 2.5 of the Proposed Rule, it will be even more difficult for the public to shed light on Interior’s actions that have been shrouded in secrecy, which insults FOIA’s overarching purpose of public disclosure.

Interior’s language in section 2.5 also appears to conflate FOIA’s requirements for submitting a FOIA request with the factors to be considered when requesting a fee waiver. Under FOIA, an agency is more likely to grant a fee waiver to a requester if she can demonstrate that “disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.” 5 U.S.C. § 552(a)(4)(A)(iii) (emphasis added). Unlike the fee waiver provision, however, FOIA’s requirements for the content of a request only mandates a discussion of “records,” see 5 U.S.C. § 552(a)(3)(A), rather than “operations or activities.” If Congress had intended for FOIA requests to identify “operations or activities,” it would have explicitly stated so, as it did in FOIA’s fee waiver provision.

These revisions to section 2.5 would also undermine agency efficiency by adding extra steps to the FOIA process. The level of specificity necessary for an agency to accept a FOIA request will incentivize a requester to call and email staff agency-wide to request information about what activities, operations, and programs should be listed in the FOIA request, leaving less time for employees to devote to other issues. Once Interior deems a request too vague or burdensome, the agency will return the request to the requester, who will then have 20 workdays to provide additional information or more specificity. If the requester does not respond within 20 days, it is presumed that the requester is no longer interested, and the agency will not respond further.

The Proposed Rule changes make it easier for an agency to reject FOIA requests that require what the agency deems an “unreasonably burdensome” search or requires the bureau to locate, review, redact, or arrange for “inspection of a vast quantity of material.” Even before a request is submitted, Interior may preemptively block a requester’s ability to promptly access public records. The Proposed Rule would allow Interior to impose monthly limits for processing records responsive to a given FOIA request “to treat requestors equitably by responding to a greater number of FOIA requests each month.”

While it is unclear what limits Interior would impose, this revision goes against FOIA’s mandate that “each agency, upon any request for records …, shall make the records promptly available to any person.” 5 U.S.C. § 552(a)(3)(A) (emphasis added). Moreover, in practice, the number of records that Interior would process does not mean the same thing as the number of records that Interior would release. Under the Proposed Rule, requesters will have to wait significantly longer to receive responsive records. For example, if Interior’s search locates 10,000 pages of potentially responsive records, and it imposes a 300-page-per-month limit on processing records for the request, it would take nearly three years for Interior to complete processing the records. However, Interior may well decide in its review of the records that certain records are “not responsive” to the request. While this would not only call Interior’s search into question, it would also mean that the requester may not get any records for months, violating FOIA’s requirement that agencies must promptly provide records to requesters. 5 U.S.C. § 552(a)(3)(A).
Interior’s Proposed Rule changes all references to any FOIA-mandated “time limit” to be merely a “time frame,” suggesting that FOIA’s statutory deadlines are merely guidelines. This is facially illegal. The more flexible terminology could afford Interior and its bureau agencies even more discretion to delay responses to FOIA requests. Under FOIA, these are not mere suggestions, but mandatory deadlines for all agencies.

These revisions generally complicate Interior’s FOIA response process and hinder requesters’ ability to obtain agency records even before the agency receives a FOIA request. The Proposed Rule will only increase Interior’s FOIA backlog because it eliminates certainty, consistency, and efficiency in Interior’s FOIA Process. Thus, because it is inconsistent with FOIA’s purpose, we ask Interior to withdraw the Proposed Rule.

IV. Requests for Expedited Processing Would Face an Extra Level of Review by the Solicitor, Which Would Defeat the Purpose of Seeking Expedited Processing.

Section 2.20 of the Proposed Rules would require Interior’s bureau agencies to consult with the Solicitor prior to granting requests for expedited processing of a FOIA request. This extra layer of review by the Solicitor is unnecessary and would go against the very need for expedited processing. This Proposed Rule revision would eliminate the authority to review expedited processing requests from agency staff, who have developed expertise over decades of reviewing expedited requests. Agency staff are the most qualified to determine whether a request for expedited processing is appropriate because they are the most knowledgeable about agency records, the identity of regular requesters like media outlets and public interest organizations.

V. The Solicitor’s Ability to Pre-Approve Withholdings Violates FOIA’s Purpose.

The changes in section 2.45 of the Proposed Rule would allow the Solicitor’s office to issue blanket pre-approval to withhold certain types of records. This novel, highly political extension of authority goes entirely against FOIA’s purpose of transparency and violates FOIA’s requirement that an agency “shall withhold information … only if the agency reasonably foresees that disclosure would harm an interest protected by an exemption described in subsection.” 5 U.S.C. § 552(a)(8)(A).

VI. The Proposed Rule Would Require Requesters of Fee Waivers to Meet a Higher Burden Than What FOIA Requires and Afford the Agency Greater Leeway to Deny Fee Waivers.

The Proposed Rule impermissibly requires requesters to meet an even higher burden to receive waivers of fees associated with processing their FOIA requests. Public interest requesters generally request a waiver of fees based on the fact that they request records as part of their missions to inform the public. Sections 2.45 and 2.48 of the Proposed Rules provide a broader array of reasons for Interior agencies to cite to when denying requests for fee waivers.

One change replaces the language qualifying the type of information agencies can rely upon to determine whether a requester has sufficiently demonstrated that a fee waiver is warranted. The prior language qualifying this determination as being “based on all available information” is changed to allow the agency to “consider[] the information you have provided and verify[] it as
appropriate.” Changing reliance on all available information to the information provided limits the agency’s discretion to grant fee waivers. There is no legal precedent or practice that allows an agency to ignore information that it is aware of in reaching a determination.

Another change removes an explicit prohibition on any value judgments by agency staff about whether information is “important” enough to be made public because “it is not the bureau’s role to attempt to determine the level of public interest in requested information.” Removing this language is problematic because it potentially opens the door for impermissible value judgments. This could lead to confusion and inefficiency and would more than likely invite further litigation, as there is substantial case law supporting the removed language as a requirement. The removed language also helps to avoid arbitrary and capricious agency decisions by clarifying that agency employees are not expected to guess at the public’s regard for information held by the agency.

VII. Changes to Long Held Definitions of FOIA Terms in the Proposed Rules Disadvantage Requesters and Go Against the Purpose of FOIA.

Interior’s Proposed Rule alters several key definitions that appear throughout the regulation. For example, Interior proposes to change the definition of the term “multitrack processing” to specify that while “requests in each track are ordinarily processed on a first-in/first-out basis [ ] other factors, such as litigation, may affect the sequence and/or timing of processing.” 43 C.F.R. § 2.70. This change appears to codify Interior’s problematic practice of delaying responses to FOIA requests until a requester files a complaint in court.

Similarly, Interior’s Proposed Rule completely alters the definition of a record for the purpose of FOIA. Although FOIA does not contain a specific “definitions” section, the definition of what constitutes a “record” has been interpreted and extended from other statutes like the Federal Records Act. 44 U.S.C. § 3301 et seq. That definition of “agency record” has long been interpreted to be broad. In its Proposed Rule, Interior removes the definition of “record” that is consistent with this long-held standard, eliminating the statement that “Record means an agency record” that is in the agency’s possession and control. Interior proposes to change the definition of a records to “any item, collection, or grouping of information that already is recorded, is reasonably encompassed by your request.” This vague new definition is inconsistent with FOIA, creates uncertainty for both requesters and agency staff alike, and, as a result, is likely to invite legal action to clarify what this new definition actually means.

Further limiting FOIA requesters’ ability to receive fee waivers and expedited processing for their requests, the Proposed Rule narrows the scope who may qualify as a member of the news media. Specifically, Interior has added language in the proposed rule stating that “Distributing copies of released records, electronically or otherwise, does not qualify as using editorial skills to turn the raw materials into a distinct work.”

VIII. Conclusion.

We are grateful for your consideration of these comments. We respectfully request that you withdraw the Proposed Rule as written and respond to these comments by sending a letter to my attention at the address below. If Interior should propose any new revisions to its FOIA
regulations, we ask that it provide an open and meaningful public comment process. We look forward to your response.

Sincerely,

[Signature]

Margaret E. Townsend
Open Government Staff Attorney
Center for Biological Diversity
P.O. Box 11374
Portland, OR 97211-0374
(971) 717-6409
mtownsend@biologicaldiversity.org

Barbara Vlamis
Executive Director
AquAlliance
P.O. Box 4024
Chico, CA 95927
(530) 895-9420
barbarav@aqualliance.net

Eva Dillard
Staff Attorney
Black Warrior Riverkeeper
(205) 458-0095
edillard@blackwarriorriver.org

Elisabeth Holmes
Attorney
Blue River Law, P.C.
P.O. Box 293
Eugene, Oregon 97440
(541) 870-7722
eli.blueriverlaw@gmail.com

Denise Boggs
Conservation Congress
denise@conservationcouncil-nc.org

Fredric Evenson
Ecological Rights Foundation
evenson@ecologylaw.com
Christopher Sproul  
Environmental Advocates  
envirosproul@gmail.com  

Katie Bilodeau  
Staff Attorney  
Friends of the Clearwater  
P.O. Box 9241  
Moscow, ID 83843  
katie@friendsoftheclearwater.org  

Anna Frostic  
Managing Attorney, Wildlife & Animal Research Litigation  
Animal Protection Litigation  
The Humane Society of the United States  
(202) 676-2333  
afrnostic@humanesociety.org  

Mark S. Zaid, Esq.  
Mark S. Zaid, P.C.  
Executive Director, The James Madison Project  
1250 Connecticut Avenue, N.W.  
Suite 700  
Washington, D.C. 20036  
(202) 454-2809 direct  
mark@markzaid.com  

Annie Beaman  
Our Children’s Earth Foundation  
annie.beaman@gmail.com  

Delcianna J. Winders  
Vice President and Deputy General Counsel  
PETA Foundation  
DelciannaW@petaf.org  

Attachments:  
Attachment A (Letter from WildEarth Guardians to Department of Interior (January 14, 2019))  
Attachment B (Secretarial Order 3371)
Attachment A
January 14, 2019

David Bernhardt
Acting Secretary
U.S. Department of the Interior
1849 C St. NW
Washington, D.C. 20240


Dear Acting Secretary Bernhardt:

On December 28, 2018, the U.S. Department of the Interior proposed significant, expansive, and novel revisions to its Freedom of Information Act regulations that appear to undermine government transparency, defy the Freedom of Information Act, and erode the public’s trust in the Department. See 83 Fed. Reg. 67,175 (Dec. 28, 2018). Worse, the proposed revisions have come amid a government shutdown, the holiday season, and a time of immense transition within the Interior Department with Secretary Zinke’s departure.

In light of these considerations, we request that Interior provide at least 120 days for the public to submit comments, with the 120-day comment period beginning when the government shutdown is resolved.1 We further request that the Interior Department hold public hearings regarding its proposed rule changes.

An extension of the public comment period and public hearings are imminently justified. In light of the government shutdown, which began on December 21, 2018, there are currently no Interior Department staff available to receive and review public comments. Furthermore, there is no certainty that public comment can even be submitted. Although Interior has directed the public to submit comments via the website, regulations.gov, that site indicates that “continued systems operations cannot be guaranteed.” See https://www.regulations.gov/ (accessed Jan. 2, 2019). Although the public can mail comments, we have grave concern that Interior is likely to misplace mailed comments that are stockpiled during the shutdown.

1 At a minimum, we request the Department of Interior provide an additional 60 days for the public to comment on this complex rulemaking, which has the potential for limiting and adversely impacting important public rights under FOIA. Under similar circumstances, the Department of Interior has generally provided at least its “usual 60 days” for comments, and regularly grants requests for an extension time for comments. See e.g., Application and Permit Information Requirements; Permit Eligibility; Definitions of Ownership and Control; the Applicant/Violator System; Alternative Enforcement Actions, 63 Fed. Reg. 70,580 (Mar. 21, 1998) (providing the “usual 60 days”). Indeed, in its 2016 revision of the FOIA regulations, the Department provided 60 days for comment. Freedom of Information Act Regulations, 81 Fed. Reg. 11,124 (Mar. 3 2016); see also Resource Management Planning, 81 FR 89580-01 (Dec. 12, 2016) (90 day formal comment period); Waste Prevention, Production Subject to Royalties, and Resource Conservation, 81 Fed. Reg. 19,110 (Apr. 4, 2016) (60 days); Waste Prevention, Production Subject to Royalties, and Resource Conservation; Rescission or Revision of Certain Requirements, 83 Fed. Reg. 49,184 (Sept. 28, 2018) (60 days).
Additionally, given the shutdown, the public currently has no opportunity to gain a more robust understanding of Interior’s proposal in order to provide informed and meaningful comments. There are no Interior staff currently available to answer questions regarding the proposed revisions. Although the proposal indicates that the public can contact Ms. Cindy Carfaro with the Office of Executive Secretariat for further information, Ms. Carfaro is not currently available due to the shutdown. What’s more, although organizations have submitted Freedom of Information Act requests to obtain more background records regarding the proposed revisions, the Interior Department is not currently accepting Freedom of Information Act requests.

Finally, given the nature of Interior’s proposed revisions, an extension and an opportunity to engage in public hearings is fully warranted. Interior is proposing revisions to its Freedom of Information Act regulations that appear to stretch beyond what any other federal agency has ever adopted or proposed in direct circumvention of the Act’s purpose. Interior is proposing revisions that would allow it to deny Freedom of Information Act requests that may require what it calls “unreasonably burdensome” searches, to more easily deny fee waiver requests, and to delay providing responsive records. Such revisions are without precedent and diverge significantly from the Department’s current regulations and the Freedom of Information Act itself.

Given the circumstances and the gravity of Interior’s unprecedented proposed rule changes, an extension of the public comment period and public hearings is warranted.

We request the Department of the Interior acknowledge receipt of this letter as soon as possible and provide a written response to our requests. Thank you in advance for considering this request.

Sincerely,

Jeremy Nichols
Climate and Energy Program Director
WildEarth Guardians
2590 Walnut St.
Denver, CO 80205
(303) 437-7663
jnichols@wildearthguardians.org

Margaret E. Townsend
Open Government Staff Attorney
Center for Biological Diversity
225 N. Killingsworth St.
Portland, OR 97217
(971) 717-6409
mtownsend@biologicaldiversity.org

Joshua Smith
Senior Staff Attorney
Sierra Club Environmental Law Program
2101 Webster St., Suite 1300
Oakland, CA 94612
(415) 977-5560
joshua.smith@sierraclub.org

Adam Carlesco
Staff Attorney, Climate and Energy
Food and Water Watch
1616 P St. NW, Suite 310
Washington, D.C. 20036
(202) 683-4925
acarlesco@fwwatch.org
Alison Flint
Litigation Manager and Senior Policy Analyst
The Wilderness Society
1660 Wynkoop, Suite 850
Denver, CO 80202
(303) 802-1404
alison_flint@tws.org

Wendy Jacobs
Emmett Clinical Professor of Environmental Law
Harvard Law School Emmett Environmental Law and Policy Clinic
Harvard Law School, WCC Suite 4119
(617) 496-3368
wjacobs@law.harvard.edu

Yvonne Chi
Attorney
Earthjustice
633 17th St., Suite 1600
Denver, CO 80205
(503) 295-0490
vchi@earthjustice.org

Nina Bell
Executive Director
Northwest Environmental Advocates
P.O. Box 12187
Portland, OR 97212
(503) 295-0490
nbell@advocates-nwea.org

Nicole Ghio
Senior Fossil Fuels Program Manager
Friends of the Earth US
2150 Allston Way
Berkeley, CA 94704
(510) 900-8064
nghio@foe.org

Kevin Hugh Bell
Staff Counsel
Public Employees for Environmental Responsibility
962 Wayne Ave.
Silver Spring, MD 20910
(240) 247-0298
kbell@peer.org

Yogin Kothari
Senior Manager of Government Affairs
Union of Concerned Scientists
1825 K Street NW
Washington, D.C. 20006
Ykothari@ucsusa.org

Natalie Levine
Program Manager, Park Resource Protection
National Parks Conservation Association
777 6th St NW, Suite 700
Washington, DC 20001
(202) 660-2059
nlevine@npca.org

Kym Hunter
Senior Attorney
Southern Environmental Law Center
601 West Rosemary Street
Chapel Hill, NC 27516
(919) 967-1450
khunter@selcnc.org

Dana Johnson
Staff Attorney
Wilderness Watch
P.O. Box 9623
Moscow, ID 83843
(208) 310-7003
danajohnson@wildernesswatch.org
Sarah Lamdan & Rebecca Bratspies
Professors
Center for Urban and Environmental Reform (CUER)
CUNY School of Law
sarah.lamdan@law.cuny.edu

Mark Salvo
Vice President, Landscape Conservation
Defenders of Wildlife
1130 17th Street NW
Washington DC 20036
msalvo@defenders.org

Lori Andresen
President
Save Our Sky Blue Waters
PO Box 3661
Duluth, MN 55803
(218) 340-2451
andres01@charter.net

Mike Garrity
Executive Director
Alliance for the Wild Rockies
P.O. Box 505
Helena, MT 59624
(406) 459-5936
Wildrockies@gmail.com

Gary Macfarlane
Ecosystem Defense Director
Friends of the Clearwater
PO Box 9241
Moscow, ID 83843
(208) 882-9755
gary@friendsoftheclearwater.org

Sam Kalen
Professor of Law
University of Wyoming College of Law
(Affiliation Purposes Only)
Laramie, Wyoming 82071
skalen@uwyo.edu

Zygmunt Plater
Prof. Of Law
Boston College Law School ( for ID only)
885 Centre St. Newton centre MA 02459
(617) 552-4387
Plater@bc.edu

Keith Hammer
Chair
Swan View Coalition
3165 Foothill Road
Kalispell, MT 59901
keith@swanview.org

Matt Sandler
Staff Attorney
Rocky Mountain Wild
1536 Wynkoop, Suite 900
Denver, CO 80202
(303) 579-5162
matt@rockymountainwild.org

Kelly Nokes
Staff Attorney
Western Environmental Law Center
208 Paseo del Pueblo Sur, No. 602
Taos, NM 87571
(575) 6138051
nokes@westernlaw.org

Sara Colangelo
Director of the Environmental Law & Policy Program; Visiting Professor of Law
Georgetown University Law Center
600 New Jersey Ave, NW
Washington DC 20001
(202) 661-6543
sac54@law.georgetown.edu

Victoria Clark
Executive Director
Trustees for Alaska
1026 W 4th Ave., Suite 201
Anchorage, AK 99501
(907) 433-2010
vclark@trustees.org
Stephen Bloch
Legal Director
Southern Utah Wilderness Alliance
425 East 100 South
Salt Lake City, Utah 84111
(801) 486-3161
steve@suwa.org

Katharine K DuVivier
Professor
University of Denver
2255 East Evans Avenue
Denver, CO 80208
(303) 871-6281
kkduvivier@law.du.edu

Johanna Hamburger
Wildlife Attorney
Animal Welfare Institute
900 Pennsylvania Ave, SE
Washington, DC 20003
johanna@awionline.org

Dana Bove
Vice President
Front Range Nesting Bald Eagle Studies
1935 Tincup Court
Boulder, CO 80305
(303) 862-5524
erintoes@comcast.net

Natasha Leger
Executive Director
Citizens for a Healthy Community
PO Box 1283
Paonia, CO 81428
(970) 399-9700
natasha@chc4you.org

Annecoos Wiersema
Professor of Law
University of Denver Sturm College of Law
2255 E Evans Avenue
Denver, CO 80208
awiersema@law.du.edu

Denise Boggs
Director
Conservation Congress
Billings, MT
Denise@conservationcongress-ca.org

Kevin Emmerich
Co-Founder
Basin and Range Watch
Box 70
Beatty, Nevada, 89003
(775) 553-2806
atomicquailranch@gmail.com

Shaleas Harrison
Public Bank Policy Specialist
Wyoming Wilderness Association
44 S. Main Street
Sheridan, WY 82801
(307) 272-7136
shaleas@wildwyo.org

Larry Campbell
Conservation Director
Friends of the Bitterroot
PO Box, 442
Hamilton, MT 59840
(406) 821-3110
lcampbell@bitterroot.net

Troy Redding
Community Organizer
Western Colorado Alliance
134 N 6th St.
Grand Junction, CO 81501
(970) 812 2111
troy@westerncoloradoalliance.org

Jennifer Best
Assistant Legal Director
Friends of Animals
7500 E Arapahoe Rd., Ste. 385
Centennial, CO
(720) 949-7790
Jennifer@friendsofanimals.org
Irma Russell  
Professor  
University of Missouri-Kansas City  
500 E. 52nd Street  
Kansas City, MO 64110  
(406) 493-2139  
russelli@umkc.edu

Joel A. Mintz  
Professor Emeritus and C. William Trout  
Senior Fellow  
Nova Southeastern University College of Law  
3305 College Avenue  
Davie, FL 33314  
(954) 262-6160  
mintzj@nova.edu

Margaret Bowman  
Assistant Professor  
University of Tulsa  
4th Place  
Tulsa, OK 74104  
(918) 631-2450  
wmb1339@utulsa.edu

Cyndi Tuell  
Tuell Consulting  
903 N. Alder  
Tucson, AZ 85705  
cyndi@tuellconsulting.com

Ben Levitan  
Attorney  
Environmental Defense Fund  
1875 Connecticut Ave., N.W. Suite 600  
Washington, DC 20009  
(202) 572-3318  
blevitan@edf.org

Julia Page  
Acting Oil & Gas Team Chair  
Idaho Organization of Resource Councils  
910 W. Main Street  
Boise, ID 83702  
(208) 991-4451  
dpaddock@IORCinfo.org

Alejandro Camacho  
Professor of Law and Director, Center for Land, Environment, and Natural Resources  
University of California, Irvine School of Law  
401 East Peltason Drive, Law 4500-A  
Irvine, CA 92697-8000  
(949) 824 4160  
acamacho@law.uci.edu

Peter Hart  
Staff Attorney  
Wilderness Workshop  
Box 1442  
Carbondale, CO 81623  
(970) 963-3977  
peter@wildernessworkshop.org

Patrick Llewellyn  
Attorney  
Public Citizen  
1600 20th Street NW  
Washington, DC 20009  
plewellyn@citizen.org

Patrice McDermott  
Director  
Government Information Watch  
1103 Fairview Court  
Silver Spring, MD 20910  
pmcdermott@govinfowatch.net
Sara Kendall  
Program Director  
Western Organization of Resource Councils  
220 South 27th St.  
Billings, MT 59101  
(202) 680-3538  
sara@worc.org

Vivian Stockman  
Interim Executive Director  
Ohio Valley Environmental Council  
PO Box 6753  
Huntington, WV 25773  
(304) 522-0246  
vivian@ohvec.org

Ted Boettner  
Executive Director  
WV Center on Budget and Policy  
8 Capitol Street  
Charleston, WV 25301  
(304) 720-8682  
tboettner@wvpolicy.org

Lore Rosenthal  
Program Coordinator  
Greenbelt Climate Action Network  
2-R Gardenway  
Greenbelt, MD 20770  
(301) 345-2234  
simplicitygroupsmd@gmail.com

David Sligh  
Conservation Director  
Wild Virginia  
1433 Wickham Pond Drive  
Charlottesville, VA 22902  
(434) 964-7455  
david@wildvirginia.org

Rebecca Roter  
Chairperson  
Breathe Easy Susquehanna County  
PO Box 98  
Montrose PA 18801  
(267) 733-5211  
Aludra@aol.com

Irene Leech  
President  
Virginia Citizens Consumer Council  
4220 North Fork Rd  
Elliston, VA 24087  
vaconsumeradvocate@gmail.com

Jim Anderson  
President  
Peace Action New York State  
64 Fulton St  
Manhattan, NY 10038  
Peaceactionjim@gmail.com

Barbara Adams  
Richmond Interfaith Climate Justice  
5100 Montebello Circle  
Richmond, VA 23231  
barb5100@comcast.net  
(804) 484-2773

Georgina Shanley  
Co-Founder  
Citizens United for Renewable Energy  
Ocean City, NJ  
Georginashanley@gmail.com

Larry V Thomas  
President  
West Virginia Highlands Conservancy  
P. O. Box 306  
Charleston, WV 25321  
(304) 567-2602  
larryvthomas@aol.com

Eric Engle  
Chairman  
Mid-Ohio Valley Climate Action  
3850 Central Avenue Apt. 4  
Parkersburg, WV 26104  
(304) 488-4384  
ericengle85@yahoo.com

8
Aaron Mintzes
Senior Policy Counsel
Earthworks
1612 K Street, N.W. Suite 904 Washington, DC 20006
amintzes@earthworks.org

J. Stephen Cleghorn, PhD
Owner
Paradise Gardens and Farm
2771 Paradise Road
(814) 932-6761
jstephencleghorn@yahoo.com

Andrea Miller
Executive Director
People Demanding Action
18459 Patriot Ln.
Ruther Glen, VA 22546
(443) 878-2071
andrea@peopledemandingaction.org

Peter Hudiburg
Founder
Plymouth Friends for Clean Water
P.O. Box 61
(607) 334-2986
hudiburg@frontiernet.net

Freemanhobs Allan
Veteran's Service Corps
1394 Blair Park Road
Crozet, VA 22932
(434) 409-8666
FreemanHobs@gmail.com

Carol Davis
Coordinator
Diné C.A.R.E.
HCR 63 Box 272
Dilkon, AZ 86047
(928) 679-5045
Carol.davis@dine-care.org

John Weisheit
Conservation Director
Living Rivers & Colorado Riverkeeper
PO Box 466
Moab, UT 84532
(435) 259-1063
john@livingrivers.org

George Billard
Co-Founder
SCRAM
PO Box 192
Eldred, NY 12732
info@nyscram.org

Howdy Henritz
President
Indian Creek Watershed Association
PO Box 711
Union, WV 24983
(304) 716-6760
indiancreekwater@gmail.com

Vernon Haltom
Executive Director
Coal River Mountain Watch
P.O. Box 303
Naoma, WV 25140
Vernon@crmw.net

Carole Marner
Delaware Solidarity
29 Water Street
Franklin, NY 13775
(607) 829-8451
carolemarner@frontier.net

E. Louis Priem, MD
Sustainable Otsego
276 Van Yahres Rd
Cooperstown, NY 13326
coopbirc@hughes.net
Chad Oba  
President  
Friends of Buckingham  
571 Woods Rd Buckingham 23921  
(434) 806-6332  
chado108@me.com

Dr Bob Allen  
Co-chair  
Don't Gas the Pinelands Coalition  
Seaville, NJ  
allwestc@aol.com

Jen Hilburn  
Executive Director  
Altamaha Riverkeeper  
PO Box 4122  
Macon, GA  
(912) 441-3908  
Jen@altamahariverkeeper.org

Yvonne Taylor  
Vice President  
Gas Free Seneca  
PO Box 333  
Watkins Glen NY 14891  
(607) 342-1278  
gasfreesenecagirl@gmail.com

Patti Wood  
Executive Director  
Grassroots Environmental Education  
52 Main Street,  
Port Washington, NY 11050  
(914) 422-3141  
elen@grassrootsinfo.org

Joseph Campbell  
President  
Seneca Lake Guardian  
PO Box 333  
Watkins Glen NY 14891  
(607) 769-4639  
muchado2@gmail.com

Steve Ellsworth  
Board Member  
Sustainable McDonough  
850 Hammerle Rd.  
Oxford, NY 13830  
(607) 647-9321  
steve.ellsworth2gmail.com

Marie McRae  
spokesperson  
Dryden Resource Awareness Coalition  
Dryden NY  
mmmcrae@juno.com

Cc: Executive Secretariat, U.S. Department of the Interior
Attachment B
ORDER NO. 3371

Subject: The Department of the Interior Freedom of Information Act Program

Sec. 1 Introduction. The Freedom of Information Act (FOIA) is an integral part of the Department of the Interior’s (Department) operations and cross-cuts all of the Department’s programs and initiatives. A stable, agile, and secure FOIA program is necessary to ensure effective compliance with the FOIA. It is the responsibility of every employee to cooperate with FOIA staff throughout the Department, including timely producing agency records that are responsive to FOIA requests and assisting FOIA staff with understanding the program interests the responsive records impact.

Sec. 2 Purpose. The Department is fully committed to an equitable FOIA program that ensures compliance with statutory requirements of transparency, accountability, and prompt production. The decentralized manner in which the Department’s FOIA operations are currently managed creates challenges for coordination and accountability. Exponential increases in requests and litigation have made improvements to the program a priority. The Office of the Solicitor (SOL) has established a strong legal framework for, and expertise in, the FOIA; there is a logical legal and policy nexus between SOL and the FOIA (particularly given SOL’s ongoing interface with the Department of Justice on litigation and other matters).

This Order designates the Solicitor as the Chief FOIA Officer; creates the position of Deputy Chief FOIA Officer (DCFO); establishes a reporting relationship for the Departmental FOIA Officer and Bureau FOIA officers with the DCFO; and creates a team to provide strategic direction for selected FOIA requests that impact Department-level interests.

Sec. 3 Background. From Fiscal Year (FY) 2016 to FY 2018, incoming FOIA requests to the Department increased 30 percent (from 6,428 to more than 8,350). Some Bureaus and Offices have been hit especially hard. The Office of the Secretary (OS) FOIA Office, for example, has received a 210 percent increase in FOIA requests from FY 2016. The Department’s attempts to respond accurately, completely, and in a timely manner to every request have been further hindered by the dramatic increase in litigation, particularly over Bureau non-response to initial FOIA requests. For example, at the close of FY 2018, the Department had a total of 129 active FOIA cases in litigation (39 in OS alone) compared to a total of just 6 cases in litigation at the close of FY 2015 and a total of 30 cases in litigation at the end of FY 2016.

The Department processed more than 6,900 requests in FY 2018, compared to 6,437 in FY 2016. Despite the increased production, the Department’s backlog of requests without at least a partial response has also increased. It is clear that some aspects of the FOIA program’s decentralized structure hinder efficient and effective management of operations in the current environment. Different reporting structures across Bureaus, varying sets of operating
procedures, and insufficient levels of accountability contribute to the need for Department-wide clarification of the roles and responsibilities of the FOIA program.

Sec. 4 Authority. This Order is issued under the authority of the Freedom of Information Act, as amended (5 USC 552), and section 2 of Reorganization Plan No. 3 of 1950 (64 Stat.1262), as amended.

Sec. 5 Roles and Responsibilities. Provided below are descriptions for the primary roles and responsibilities of the FOIA program:

a. Chief FOIA Officer. The Solicitor is hereby designated as the Chief FOIA Officer.

b. Deputy Chief FOIA Officer. The position of the Deputy Chief FOIA Officer (DCFO) is hereby established. The DCFO shall report to the Solicitor and oversee the Department’s FOIA program, which may include establishing FOIA policies, procedures, and practices, and directing the activities of the FOIA program throughout the Department in consultation with, as appropriate, the Deputy Bureau Directors. The DCFO may also assume control over any aspect of any FOIA request in the Department, with the exception of those sent to the Office of the Inspector General (OIG). The DCFO will manage, and determine when to utilize, the FOIA Assistance Coordination Team (FACT).

c. DCFO. The DCFO shall provide appropriate guidance to the Departmental FOIA Officer and have a reporting relationship with the Departmental FOIA Officer, including approving the annual performance plan, providing input into the progress review and rating narrative, and approving the final rating.

d. Bureaus. Each Bureau shall have a full-time Bureau FOIA Officer who is responsible for their Bureau’s FOIA functions and shall have, with the exception of the Bureau FOIA Office for the OIG, a dual reporting relationship to the DCFO and their respective Bureau Deputy Director. With the exception of the Bureau FOIA Office for OIG, the DCFO will approve Bureau FOIA Officers’ annual performance plans, provide input into progress reviews and rating narratives, and approve the final rating. Bureau Deputy Directors will assess, ensure, and report their Bureau’s FOIA compliance to the Chief FOIA Officer.

e. FACT. This Order establishes the FACT.

(1) The FACT shall consist of the DCFO, a representative of the Division of General Law, the Departmental FOIA Officer, and additional members requested by the DCFO (including, as appropriate, FOIA professional or program experts from Bureaus affected by a FOIA request).

(2) Bureau FOIA Officers will be responsible for providing input into decisions of the FACT, when requested by the DCFO, and for executing all decisions affecting their Bureaus that are made by the FACT.
Sec. 6 Implementation. The Solicitor is responsible for implementing this Order. Heads of Bureaus must ensure completion of revisions to their Departmental Manual functional descriptions and Bureau manuals and policies to reflect the requirements/changes in this Order within 30 days of the effective date of the Order.

Sec. 7 Effective Date. This Order is effective immediately and will remain in effect until the provisions are converted to the Departmental Manual, or until it is amended, superseded, or revoked, whichever occurs first.

[Signature]
Secretary of the Interior

Date: NOV 20 2018