

OUTDOOR ALLIANCE

January 29, 2019

Daniel Jorjani
Principal Deputy Solicitor
Department of the Interior
1849 C Street, NW
Washington, D.C. 20240

RE: Docket No. DOI-2018-0017; Proposed Rulemaking for Freedom of Information Act Regulations

Dear Principal Deputy Solicitor Jorjani:

Outdoor Alliance is a coalition of ten member-based organizations representing the human powered outdoor recreation community. The coalition includes Access Fund, American Canoe Association, American Whitewater, International Mountain Bicycling Association, Winter Wildlands Alliance, The Mountaineers, the American Alpine Club, the Mazamas, Colorado Mountain Club, and Surfrider Foundation and represents the interests of the millions of Americans who climb, paddle, mountain bike, backcountry ski and snowshoe, and enjoy coastal recreation on our nation's public lands, waters, and snowscapes.

The Importance of FOIA and the Justification for the Proposed Regulations

Freedoms of Information Act (FOIA) record requests are vital to the work of Outdoor Alliance member organizations, and to the ability of the public to understand how management decisions are made for our public lands. We were therefore very pleased to see the preamble of the proposed rule reaffirm Department of the Interior's (DOI's) commitment to FOIA, "The Department is fully committed to an equitable FOIA program that ensures compliance with the statutory requirements of transparency, accountability, and prompt production."¹

Given the importance of FOIA, revisiting agency regulations regarding statutory compliance is certainly a worthy endeavor. As noted in the preamble, the motivation for the proposed rule, which includes a number of significant structural changes to how DOI handles its FOIA responsibilities, is the recent increase in FOIA requests.² For example, there has been a 30% increase in FOIA requests between 2016 and 2018, and DOI has processed more than 6,900 FOIA requests in 2018 as opposed to 6,437 in 2016.

¹ 83 Fed. Reg. 67175, at 67176.

² Id.



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While the increase in FOIA requests over the past 2 years is notable, we are not sure that restructuring DOI's FOIA regulations and related protocols is the most efficient, let alone warranted, response to the uptick in citizen interest in DOI's work.

Potential Contributing Factors to the FOIA Activity Uptick

The uptick in FOIA activity appears to be correlated with a change in administrations. New administrations typically involve a new team of people with different perspectives, priorities, and approaches than the prior administration. This has especially been the case with DOI through its renewed focus on the energy attributes of public lands through President Trump's Energy Dominance Agenda. When DOI goals and priorities change, we believe that an uptick in public interest should not only be expected, but also welcomed as a sign of an engaged citizenry.

Though we have not been able to research this theory given the brisk comment period, it does comport with common sense. If the FOIA activity uptick is due to increased public interest in the priorities of a new administration, changing DOI's FOIA regulations might not be a warranted response. Rather than changing the rules, a more efficient approach might be to simply allocate more resources to DOI's FOIA team so they are in a better position to address the public's interest in DOI's work related to public lands.

To this end, we encourage DOI to explore whether a modest increase in resources to the FOIA team is a viable solution for addressing the FOIA activity uptick, rather than changing federal regulations and substantially restructuring how FOIA requests are processed by DOI. We think entertaining this idea is important because a number of the proposed changes, as discussed below, will have a negative impact on transparency, accountability and general civic engagement.

Comments on Particular Aspects of the Proposed Rule

As a threshold matter, we oppose all rule changes that would allow pre-approved withholding of records, exemptions to referrals, the addition of another level of the FOIA to process the requests (FOIA Requester Center), and the change of language in the Act that provides more vague descriptions of the amount of time expected in processing requests.

Similarly, the requirement for requests to be precise and the codification of only assisting requesters with necessary additional specific information in their requests if it is practicable and the information is not too vast, are unworkably vague.

As DOI has a statutory obligation to respond to public records requests, it is critically important that FOIA lawsuits are not the standard way for the public to learn about



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public policies. The proposed framework will dissuade requests about public lands and waters, their maintenance, and public projects benefiting these natural resources. We fear that these proposed changes will not only undermine the spirit of transparency, but will end up putting more weight behind judicial remedies rather than public comments.

Rather than increasing the number of requests that the Department can manage, the proposed rule changes place additional constraints on how requests are made. For instance, requests must now be sent to the FOIA Requester Center first before they go to the Public Liaison. This creates another barrier to the process and potentially slows the process down more, contrary to the intent shared in the preamble.

Expecting regular citizens to master the hierarchy and subdivision of DOI is unfair and unreasonable, and the proposal regarding bureaus no longer forwarding requests to other, more appropriate, bureaus is antithetical to the entire reason for FOIA. Moreover, this proposed change would likely require multiple FOIA requests sent to multiple agencies or bureaus in lieu of an individual recipient, again contradicting the purported goals for the rule change.

The proposed authority for a bureau to impose a monthly limit on processing requests is problematic and can result in an essentially arbitrary dismissal of requests. The proposed latitude in how quickly requests are processed undermines accountability of the bureau to process the requests in a timely manner and unfairly curtails judicial recourse. Similarly, we are unsure as to the utility of linking processing time and the sequence of responses to litigation.

The proposed rule makes fee waivers more difficult to obtain and subject to significant agency discretion. We believe waiving the fees in some cases when they might not be entirely justified is a small cost to incur to ensure that they are always waived when necessary.

Conclusion

Freedom of Information Act records requests are vital to the work of Outdoor Alliance member organizations, and to the ability of the public to understand how management decisions are made for our public lands. In the aggregate, we believe that these rule changes would stifle the public's right to understand how decisions are being made inside the Department of the Interior.

Some modest changes to the regulations might be justified given the uptick of FOIA activity. However, given the centrality of transparency and accountability to an informed citizenry and our cherished tradition of self governance, we strongly suggest that DOI



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first explore some more modest, non-structural strategies to address the recent increase in the public's interest in DOI's important work.

Best regards,



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cc: Adam Cramer, Executive Director, Outdoor Alliance
Chris Winter, Executive Director, Access Fund
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Mark Menlove, Executive Director, Winter Wildlands Alliance
Tom Vogl, Chief Executive Officer, The Mountaineers
Phil Powers, Chief Executive Officer, American Alpine Club
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