

UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
Idaho State Office
1387 South Vinnell Way
Boise, Idaho 83709-1657

In Reply Refer To:
1278/1872 (954) P

November 26, 2008

EMS TRANSMISSION: 12/1/2008
Instruction Memorandum No. ID-2009-014
Expires: 09/30/2010

To: All Employees

From: State Director

Subject: Processing of *Touhy* Requests

Program Area: FOIA and Records Management

Purpose: The purpose of this Instruction Memorandum (IM) is to provide procedures to follow when employees are served with a subpoena, and/or a *Touhy* Request (pronounced "Too-ee"), that seeks document production or testimony related to litigation in which the United States is not a party. The requirement for a *Touhy* Request is the result of *United States ex rel. Touhy v. Ragen*. The request is required by the Department of the Interior (Department) and must address specific information concerning such issues as relevance of desired testimony or records to the proceedings, identity of parties to the proceeding, and any known relationships that involved parties have to the Department's mission or programs. Submitters must also provide a statement of their willingness to pay costs for record production and/or travel expenses for employee(s) to testify.

Policy/Action: No BLM-Idaho employee may testify in or produce records for any proceeding to which the United States is not a party unless specifically authorized by the State Director. From time to time, employees are served with subpoenas (and/or *Touhy* Requests) requiring them to either testify or produce agency documents for litigation. When an employee receives a subpoena or a *Touhy* Request (as described above), he/she must immediately notify their supervisor and fax (or scan/e-mail) a copy of the request to the State FOIA Coordinator with a copy to the State Records Administrator. A follow-up telephone call by the employee or the employee's supervisor to the State FOIA Coordinator is required to ensure the document(s) have been received. If the State FOIA Coordinator is not available, contact the State Records Administrator. Their contact information is as follows:

State FOIA Coordinator: Gloria_VanNoy@blm.gov (208) 373-3947 Fax (208) 373-3904
State Records Administrator: Lorraine_Graves@blm.gov (208) 373-3946 Fax (208) 373-3904

The State FOIA Coordinator will fax (or scan/e-mail) a copy of the subpoena and/or *Touhy* Request to the Boise Field Solicitor's Office (with a follow-up telephone call to that office). Upon receipt, a copy of the request will be hand carried to the State Director and the appropriate Deputy State Director.

An attorney-advisor from the Solicitor's Office will communicate directly with the requester if clarification or further discussion is necessary. Employees must not respond to the subpoena, the *Touhy* Request, or the submitter unless instructed to do so by the Solicitor's Office. The decision to grant or deny a *Touhy* Request will be made at the State Director's level in consultation with the Boise Field Solicitor's Office.

Timeframe: This policy is effective immediately.

Background: Except for Federal court civil proceedings in which the United States is a party; criminal cases before Federal, State, and Tribal courts involving Bureau of Land Management (BLM) employees and records; and Congressional proceedings, it is the Department's general policy not to allow its employees to testify or to produce Department records either upon request or by subpoena. However, there are certain instances where the Department will consider whether to allow testimony or production of records. Department regulations for obtaining employee testimony and/or production of records are contained in the Code of Federal Regulations (CFR) at 43 CFR Part 2, Subpart H, §§ 2.80 through 2.90. The regulations explain in detail the requirements that a petitioner must follow for requesting employee testimony or agency records.

Manual/Handbook Sections Affected: This IM serves as interim guidance to Idaho BLM Manual Supplement 1278, External Access to BLM Information, until it is updated.

Coordination: This IM was coordinated through the Boise Field Solicitor's Office, the State FOIA Coordinator, the State Records Administrator, and the Chief Information Officer.

Contact: For more information concerning this IM, contact Gloria Van Noy, State FOIA/Privacy Act Coordinator, at (208) 373-3947.

Boise District with Union: Management is reminded to notify and satisfy any bargaining requirements prior to implementation.

Signed
Thomas H. Dyer

Authenticated
Shellie Hartsock
Records Management Specialist