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From: Bauman, Susan
Sent: 2017-08-07T12:13:59-04:00
Importance: Normal
Subject: New FOIA 2017-71
Received: 2017-08-07T12:14:22-04:00
[Request.pdf](#)

Hello, we have received a new FOIA request from James Banks, Hogan Lovells LLC, regarding the development and issuance of the Bears Ears **Interim Report**. Please forward this request to any additional offices or individuals not included in the "To: Line", who may have responsive records

Please see the attached FOIA request.

FOIA Number is: **FOIA 2017-71 Hogan Lovells, Banks**

All records need to be provided to me on or before August 28, 2017.

1. Carefully read the FOIA request and any specific instruction by the FOIA Coordinator (FC). Is the request clear? If not, contact your FC immediately. Do you understand what materials are being sought and can you perform a search for the materials? If the FOIA request includes a general request e.g. "all documents relating to grazing" and specific requests, e.g. "Specifically, we are asking for grazing permits" you may not ignore the general request and only search for the specific. Search for both categories of records. Contact the FC if you are unsure, or if the search might be very broad.

2. If you cannot respond on or before the Date Due, contact the FC immediately.

3. Are you aware of any other individual(s) and/or offices(s) that may have responsive records? If so, notify the FC immediately.

4. Conduct and document your search or document that the records do not exist. If you are unsure whether the records exist, you must conduct a search. Records searches include, but are not limited to: (Check all that apply):

- Hard Copy files (correspondence, maps, reference material)
- Files maintained in your work area
- Central Files
- Docket Area
- **Files of absent/former employees** who may have had responsive records
- Electronic systems/application systems (hard drive/laptops/ network devices)
- Email (includes Inbox, Sent Folder, Archives)
- Word processing
- Databases
- Spreadsheets
- Audio tapes
- Search Terms Used:

- Other (Explain) _____

5. Document your search time. Search time includes the time it takes to locate the requested records; i.e. physically searching through a file to locate a specific record. Search time does not include the time it takes to make a copy of or scan the record.

Search Time (increment of 15 minutes): _____ GS-_____

6. If records exist:

All records should be provided in electronic form ("pdf"). Label your Disk/Folder with FOIA number: FOIA 2017-41 Hogan Lovells, Banks

- Count the number of pages by item.


of Pages

7. If records do not exist, explain:

8. Records that you feel are sensitive (example: attorney client, deliberative, internal working,) should be placed in a separate folder and labeled accordingly. Records deemed "sensitive" require a "justification statement" on why you believe these records should be withheld. Your statement and the responsive records will be reviewed by the Solicitor.

If you have any questions please contact me.

Susan
4206



**Hogan
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July 19, 2017

VIA ELECTRONIC MAIL AND CERTIFIED MAIL

Lance Purvis, FOIA Contact
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1849 C Street, NW
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Susan Bauman
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Salt Lake City, UT 84101
Bureau of Land Management
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Ryan Witt, BLM FOIA Officer
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1849 C Street NW, RM 2134 LM
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E-mail: BLM_WO_FOIA@blm.gov

Re: Freedom of Information Act Request / Expedited Processing Requested

Dear FOIA Officers:

Pursuant to the Freedom of Information Act, 5 U.S.C. § 552 ("FOIA"), I write on behalf of the Conservation Lands Foundation ("CLF") to request information, as described in detail further below, from the United States ("U.S.") Department of the Interior ("DOI"), including the Bureau of Land Management ("BLM"), and from each of the above-specified components, relating to Secretary of the Interior Ryan Zinke's Interim Report on the Bears Ears National Monument (Interim Report Pursuant to Executive Order 13792 (June 10, 2017) (hereinafter, "Bears Ears Interim Report") and President Trump's Executive Order 13792 (April 26, 2017) directing the Secretary of the Interior to review national monuments designated or expanded since 1996 under the Antiquities Act of 1906.

As you are aware, on June 30, 2016, President Obama signed into law the FOIA Improvement Act of 2016, which codified the presumption of openness policy established in January 2009 by President Obama for releasing Government information under FOIA. As emphasized by Congress, the intent of the law is to "mandate[] that an agency may withhold information only if it reasonably foresees a specific identifiable harm to an interest protected by an exemption, or if disclosure is prohibited by law." *See* S. Rep. No. 114-4 at 4 (2015). In establishing this policy, which is now codified by law, President Obama stated that agencies may not withhold information from the public "merely because public officials might be embarrassed by disclosure, because errors and failures might be revealed, or because of speculative or abstract fears." President Barack Obama, *Memorandum for the Heads of Executive Departments and Agencies, Subject: Freedom of Information Act* (Jan. 21, 2009). Specifically, the law establishes a new, rigorous standard for disclosure by requiring that "an agency shall withhold information under this section only if (I) the agency reasonably foresees that disclosure would harm an interest protected by an exemption . . . or (II) disclosure is prohibited by law." 5 U.S.C. § 552(a)(8)(A)(i)(I)-(II). In the context of existing FOIA disclosure requirements, this amendment requires that agencies must explain the basis for reasonably foreseeing a specific identifiable harm to a protected interest -- with respect to *each portion* of withheld records -- in the course of designating reasonably segregable portions for release. Similarly, FOIA provides that if only a portion of a record qualifies for exemption from release pursuant to one of the exemptions listed under section 552(b) *and* the standards established in section 552(a)(8), all reasonably segregable portions must still be provided. *See id.* § 552(b). CLF expects these standards to be rigorously applied and thoroughly documented in processing this request.

Accordingly, I hereby request all records and information relating to the development and issuance of the Bears Ears Interim Report. This request includes but is not limited to:

1. All records relating to communications involving Secretary Zinke and/or other DOI personnel with state and local interests, and other stakeholder groups, conducted formally

or informally, as part of the Bears Ears Interim Report review process and development of the Bears Ears Interim Report. *See* Bears Ears Interim Report, at 4–5. This request includes, but is not limited to, memoranda, phone logs, meeting notes, calendar entries, schedules, requests for meetings, and any event planning documents including talking points and also includes any information provided by officials or representatives on the land and uses (existing or proposed) within the Bears Ears National Monument, including with regard to the boundaries of the Monument. This request includes the identification of all DOI personnel involved in these communications and/or preparation of any materials associated with the review process.¹

2. All records relating to communications involving Secretary Zinke and/or other DOI personnel with the Department of Agriculture, and all Executive Offices of the President of the United States, including, but not limited to, the Office of Management and Budget, the Assistant to the President for Economic Policy, the Assistant to the President for Domestic Policy, and the Council on Environmental Quality, conducted formally or informally, as part of the Bears Ears Interim Report review process and development of the Bears Ears Interim Report. *See* Bears Ears Interim Report, at 4–5. This request includes, but is not limited to, memoranda, phone logs, meeting notes, calendar entries, schedules, requests for meetings, and any event planning documents including talking points and also includes any information provided by these Departments and Offices on the land and uses (existing or proposed) within the Bears Ears National Monument, including with regard to the boundaries of the Monument.
3. All records relating to communications involving Secretary Zinke and/or other DOI personnel with any members of Congress or congressional staff members, conducted formally or informally, as part of the Bears Ears Interim Report review process and development of the Bears Ears Interim Report. *See* Bears Ears Interim Report, at 4–5. This request includes, but is not limited to, memoranda, phone logs, meeting notes, calendar entries, schedules, requests for meetings, and any event planning documents including talking points and also includes any information provided by congressional representatives or their staff on the land and uses (existing or proposed) within the Bears Ears National Monument, including with regard to the boundaries of the Monument.
4. All records relating to communications involving Secretary Zinke and/or other DOI personnel with any lobbyists, political action committees (PACs), trade associations, or representatives of energy or extractive industry groups or companies, conducted formally or informally, as part of the Bears Ears Interim Report review process. *See* Bears Ears

¹ For this request and related requests, CLF understands that at least two likely custodians of responsive records are: Ms. Kathleen Benedetto, Special Assistant to the Secretary (email address: kathleen_benedetto@ios.doi.gov), and Mr. Marshall Critchfield, Advisor, Office of the Assistant Secretary – Fish, Wildlife, and Parks (email address: marshall_critchfield@ios.doi.gov). This information is in no way intended to limit the scope and sources that are subject to this FOIA request.

Interim Report, at 4–5. This request includes, but is not limited to, memoranda, phone logs, meeting notes, calendar entries, schedules, requests for meetings, and any event planning documents including talking points and also includes any information provided by the aforementioned individuals, groups, associations, or companies, or their representatives staff on the land and uses (existing or proposed) within the Bears Ears National Monument, including with regard to the boundaries of the Monument.

5. All documentation and records relating to the contents of the Bears Ears Interim Report, including, but not limited to, any and all materials relating to the following statements, facts, or descriptions:
 - a. The Bears Ears National Monument does not fully conform with the policies set forth in section 1 of Executive Order 13792 (April 27, 2017). *See id.* at 3, 5.
 - b. Certain lands within the Bears Ears National Monument “are more appropriately set aside under another type of designation, such as a national recreation area.” *Id.* at 5.
 - c. For some areas in the Bears Ears National Monument, “management prescriptions appear to be too restrictive . . .” *Id.*
 - d. “[T]ribal interests have not been granted an adequate role in management of [Bears Ears National Monument] given the unique significance of the area to tribes and their traditional knowledge, expertise, and use.” *Id.*
 - e. “[M]uch of the land [within the Bears Ears National Monument] is compatible with multiple-use practices, including recreation; grazing; timber harvest; mining; and traditional activities, such as gathering of medicinal herbs and plants, hunting, fishing, and wood-gathering.” *See id.* at 1.
 - f. Any effects of the designation of the Bears Ears National Monument on the available uses of land within the monument. *See id.* at 3.
 - g. Any effects of the designation of the Bears Ears National Monument on the available uses of land beyond the boundaries of the monument. *See id.*
 - h. Any effects of the designation of the Bears Ears National Monument on the use and enjoyment of non-federal lands within or beyond the boundaries of the Bears Ears National Monument. *See id.*

- i. "Concerns of state, tribal, and local governments affected by [the] designation [of the Bears Ears National Monument], including the economic development and fiscal condition of affected states, tribes, and localities." *Id.*
 - j. "Portions of the [Bears Ears National Monument] area . . . home to significant recreational opportunities, including hiking, backpacking, canyoneering, mountain biking, and rock climbing." *Id.* at 4.
6. All records relating to the statement on page 4 of the Bears Ears Interim Report that DOI "received approximately 76,500 comments on" Bears Ears National Monument.
 7. All records relating to the number, percentage, proportion, ratio, or difference in public comments, received before and after the Bears Ears Interim Report, in favor of or against any change to the Bears Ears National Monument.
 8. All records relating to any inventory, model, or analytical method for predicting, locating, identifying, or classifying archaeological or paleontological sites or artifacts within the boundaries of the Bears Ears National Monument. This request includes documents not specifically created for the Bears Ears National Monument, but covering or relating to areas within the boundaries of the Bears Ears National Monument. This request further includes proposed, planned, or draft inventories, models, or analytical methods and any inputs to, outputs from, or the authors or creators of such models or analytical methods.
 9. All records related to requests 1–8 above that Recipients previously produced in response to other FOIA requests.

This FOIA Request is not meant to be exclusive of any other records which, though not specifically requested, would have a reasonable relationship to the subject matter of this request, including any information related to the preparation and issuance of Executive Order 13792. With respect to the form of production, *see* 5 U.S.C. § 552(a)(3)(B), I request that responsive documents be provided electronically in text-searchable, static-image format (PDF), in the best image quality in the agencies' possession. I further request that reasonable metadata be transmitted along with responsive documents, including but not limited to email attachments, author and recipient information, date and time stamps, and the like.

Defined Terms

The term "DOI" as used herein refers to the U.S. Department of the Interior and includes all offices, and all officers, staff, agents, consultants, political appointees, and employees thereof.

The term "BLM" as used herein refers to the U.S. Bureau of Land Management and includes all offices, as well as all officers, staff, agents, consultants, political appointees, and employees thereof.

The term "Recipients" as used herein means all entities, department, agencies, and/or bureaus of the U.S. Federal Government to which this FOIA request is directed, including DOI and BLM.

The term "records" as used herein includes the original and all non-identical copies, however produced or reproduced, of any written or graphic matter, as well as computer files, including but not limited to writings, handwritings, drawings, graphs, charts, maps, correspondence, faxes, electronic mail (i.e., e-mails), attachments to electronic mail, any other electronic communications, notes of telephone conversations or of meetings or conferences, minutes of meetings, interoffice communications, memoranda, studies, analyses, results of investigations, photographs, sound recordings, electronically stored information, other data compilations from which information can be obtained, and any other documentary material, regardless of physical form or characteristics.

The term "relating to" as used herein means addressing, constituting, mentioning, discussing, describing, reflecting, identifying, dealing with, consisting of, explaining, referring to, containing, enumerating, or in any way concerning or pertaining to, in whole or in part, directly or indirectly.

FOIA Response

The records requested herein relate to the development and publication of the Bears Ears Interim Report and the related predecessor directive, Executive Order 13792.

These records are not exempt from disclosure. If Recipients should deny access to any records covered by this request, however, please describe in detail each of those records and specify the statutory basis claimed for denial as well as any reasons for asserting that claim. Specifically, please provide an exemption log identifying each document for which the exemption is claimed, together with the following information: date, sender, recipient, type (e.g. letter, memorandum, telegram, chart, photograph, etc.), subject matter of the document, the basis on which exemption is claimed, and the paragraph or paragraphs of this request to which the document responds. As described above, FOIA provides that if only a portion of a record is exempt from release, all reasonably segregable portions shall be provided. Thus, if Recipients assert that a portion of a record that I have requested is exempt, please provide me with a copy of the remainder of the record and provide in the exemption log the information specified above for the portion being treated as exempt. If Recipients assert that the exempt portions cannot be reasonably redacted, please state in detail the reasons for that assertion.

Please provide the requested material as soon as possible, but no later than FOIA's applicable deadline(s) for a response, and please provide the required response within the twenty (20) day period prescribed by FOIA. Please forward currently available records as soon as possible and others as they become available.

Request for a Fee Waiver

I respectfully request that you waive all fees in connection with this request as provided by 5 U.S.C. § 552(a)(4)(A)(iii); 43 C.F.R. § 2.45(a). CLF is a 501(c)(3) non-profit organization incorporated under the laws of Delaware and headquartered in Durango, Colorado. CLF's organizational purpose is to promote environmental conservancy through assisting the National Landscape Conservations System (or the National Conservation Lands) and preserving open space and wilderness. The National Conservation Lands encompass 31 million acres and 2,400 river miles of National Monuments, National Conservation Areas, Wilderness and Wilderness Study Areas, Wild and Scenic Rivers, National Scenic and Historic Trails, and other special designations. To fulfill its organizational purpose, CLF works to protect, restore, and expand the National Conservation Lands through education, advocacy, and partnership. CLF requests a fee waiver under 43 C.F.R. § 2.45, as all of the documents requested are likely to contribute significantly to public understanding of the operations and activities of the Government, and release of the documents is not in the commercial interest of CLF.

Under DOI regulations, a party seeking a fee waiver must show (1) how the records concern the operations or activities of the Federal government; (2) how disclosure is likely to contribute to public understanding of those operations or activities; (3) how disclosure is likely to significantly contribute to the understanding of a reasonably broad audience of persons interested in the subject, as opposed to your individual understanding; and (4) how the public's understanding of the subject in question will be enhanced to a significant extent by the disclosure. 43 C.F.R. § 2.48(a).

A. The records concern the operations or activities of the Federal government.

The records CLF seeks are records either created or solicited by the Federal government in support of Executive Order 13792 and the Bears Ears Interim Report, which recommends that: "(1) the existing boundary of the [Bears Ears National Monument] be modified to be consistent with the intent of the [Antiquities Act]; (2) Congress authorize tribal co-management of designated cultural areas; (3) Congress designate selected areas within the existing [Bears Ears National Monument] as national recreation areas or national conservation areas; and (4) Congress clarify the intent of the management practices of wilderness or [wilderness study areas] within a monument." See Bears Ears Interim Report, at 1, 5. The lands within the Bears Ears National Monument are federal lands, administered, in part, by the BLM. Accordingly, the records requested bear directly on the operations and activities of the Federal government in its ongoing and future management of these lands for the public. Furthermore, the records requested

are directly related to the future actions of the President of the United States and the United States Congress. Thus, all of the records requested concern the operations or activities of the Federal government.

B. Disclosure is likely to contribute to public understanding of those operations or activities.

The records requested contain meaningful information that has not been made available to the public, to CLF, or—to the best of CLF's knowledge—other organizations. Furthermore, as discussed above, these records are directly related to the activities of the Federal government in its ongoing and future management of public lands, as these records will help to explain the bases for Secretary Zinke's recommendations contained in the Bears Ears Interim Report and the related predecessor directive, Executive Order 13792. Secretary Zinke's recommendations are of supreme interest to the public, as evidenced by the significant number of public comments that were submitted to the DOI during a 15-day public comment period established as part of the Bears Ears Interim Report review process. *See* Bears Ears Interim Report, at 4.² And the Secretary's extension of the comment period to July 10 confirmed the significant public interest in the Bears Ears review process, as reports indicate that over one million public comments were submitted in response to DOI's National Monument review triggered by Executive Order 13792.³ The disclosure of the requested records will therefore increase the public's understanding of these issues through increased transparency as to the bases for Secretary Zinke's recommendations, among others, that the existing boundary for the Bears Ears National Monument be modified and that Congress alter the management designations of certain lands within the Bears Ears National Monument.

As detailed above, CLF promotes environmental conservancy through assisting the National Landscape Conservations System (or the National Conservation Lands) and preserving open space and wilderness. CLF regularly publishes information on the National Landscape Conservations System and wilderness. Publications include online information accessible for free to the public-at-large and newsletters to members of the organization. With ties to other organizations, CLF is well equipped to share with and disseminate to the public the requested records. Accordingly, the requested records will be disclosed to the public in a manner that assists the public in understanding the Bears Ears review process.

² The Bears Ears Interim Report states that the DOI received approximately 76,500 comments during the public comment period. *See* Bears Ears Interim Report, at 4. However, perhaps because regulations.gov appears to count comments submitted together as single comments, this number is inconsistent with other estimates of approximately 685,000 individual comments on the Bears Ears National Monument. *See, e.g.,* National Parks Conservation Association, *More than 685,000 Comments Submitted in Support of Bears Ears National Monument in less than 15 days*, <https://www.npca.org/articles/1557-more-than-685-000-comments-submitted-in-support-of-bears-ears-national#sm.000o5qpx1bmcfuqusn2onfd7isl3>.

³ *See* Emily Brenson, *More than 1 Million Comments Were Submitted to Interior*, High Country News (July 10, 2017), <http://www.hcn.org/articles/monuments-more-than-one-million-comments-were-submitted-to-interior-ryan-zinke>.

C. Disclosure will significantly contribute to the understanding of a reasonably broad audience of persons interested in the subject, as opposed to CLF's individual understanding.

CLF anticipates that the majority of the records requested will consist of recently produced documents related to the Bears Ears Interim Report review process that are not otherwise publicly available. As explained above, because CLF is in a position to effectively disseminate the requested records, disclosure of these records to CLF will significantly and meaningfully increase the public's understanding of Secretary Zinke's recommendations. Because the Bears Ears Interim Report and review process is a matter of significant public interest, this is pivotal to ensuring the public has an adequate understanding of the underlying bases for Secretary Zinke's recommendations.

D. The public's understanding of the subject in question will be enhanced to a significant extent by the disclosure of the requested records.

This FOIA request seeks records unavailable by any other means concerning the operations and activities of the Federal government. As indicated above, CLF intends to make the information it receives widely and easily available by, among other things, posting it on websites, and including it in reports. The records and information will thereby enhance the public understanding of the importance of the ongoing and future management of the public lands contained in the Bears Ears National Monument. Furthermore, CLF is qualified and experienced in these issues, and thereby well-situated to review, analyze, and summarize the requested records, and does not seek this information for commercial purposes.

For all of the above reasons, a fee waiver is warranted in this situation. If this request is denied, please provide, as required, a full explanation for why the fee waiver request did not meet the fee-waiver criteria provided in the DOI regulations, as well as the name(s) and title(s) or position(s) of each person responsible for the denial; the name and title of the Office of the Solicitor attorney consulted; and a statement that the denial may be appealed within 30 workdays of the date of the denial.

Expedited Processing

I respectfully request expedited processing of this request. FOIA provides for expedited processing of requests for agency records, and directs agencies to "process as soon as practicable any request for records to which [they have] granted expedited processing." 5 U.S.C. § 552(a)(6)(E)(iii). Expedition is available in cases in which the person requesting the records demonstrates a compelling need. *Id.* § 552(a)(6)(E)(i). A compelling need may be shown where, "with respect to a request made by a person primarily engaged in disseminating

information,” there is an “urgency to inform the public concerning actual or alleged Federal Government activity.” *Id.* § 552(a)(6)(E)(v)(II); *see also* 43 C.F.R. § 2.20(a)(2).

As discussed in detail above, the records requested here concern a matter that has generated considerable public interest and are necessary to ensure that the public is sufficiently informed of the factual bases underlying Secretary Zinke’s bases for recommending significant changes to the administration of the Bears Ears National Monument and the public lands contained within its current boundaries. Ensuring that any actions taken to alter, change, or otherwise affect the protection and management of these public lands is not detrimental to the prehistoric, historic, and scientific areas identified within the Bears Ears National Monument is of critical and immediate importance. This is particularly so, given the fact that under Executive Order 13792 the deadline for the Secretary to submit a final report and recommendations on the Bears Ears National Monument is August 24, 2017. And while CLF is not a representative of the news media, as described above, a primary focus and purpose of the organization is the publication of information on the National Landscape Conservations System and wilderness, including online information accessible for free to the public-at-large and newsletters to members of the organization. Accordingly, CLF’s FOIA request meets the requirements for expedited processing established in 43 C.F.R. § 2.20.

By codifying the presumption of openness through the FOIA Improvement Act of 2016, Congress has “put[] the force of law behind the notion that sunshine, not secrecy, is the default setting of our government.” *See* Con. Rec. S3825 (daily ed. June 13, 2016 (statement of Sen. Leahy)). I look forward to your response regarding our request for expedited processing within ten (10) calendar days. *See* 5 U.S.C. § 552(a)(6)(E)(ii)(I); 43 C.F.R. § 2.20(d). I further look forward to receiving your response to this Request itself within twenty (20) business days, as required under 5 U.S.C. § 552(a)(6)(A)(i) and 43 C.F.R. § 216(a). I reserve the right to appeal a decision to withhold any information, a denial of our request for expedited processing, or denial of our request for a waiver or limitation of fees.

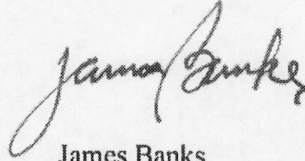
Please furnish all responsive records electronically to:

James Banks
james.banks@hoganlovells.com

Houston Shaner
houston.shaner@hoganlovells.com

Should you need to communicate with me regarding this request, please contact me by email or phone using the information provided below. Thank you in advance for your assistance.

Sincerely,

A handwritten signature in dark ink, appearing to read "James Banks". The signature is fluid and cursive, with the first name "James" and last name "Banks" clearly distinguishable.

James Banks
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