

**From:** Fisher, Timothy  
**Sent:** 2017-07-21T09:22:01-04:00  
**Importance:** Normal  
**Subject:** Fwd: FOIA Search Request - 2017-00758  
**Received:** 2017-07-21T09:22:14-04:00  
[FOIA to BLM 3 30 17 FINAL \(1\).pdf](#)  
[Production Guidance 2017-00758.docx](#)  
[WO DAD 2017-00758.docx](#)

Reminder FOIA Request for Bears Ears is due today.

Please review information within the date range to search for potentially responsive records from January 20 through March 30, 2017. Please search for responsive records per the instructions and details in the production guidance document (attached) as summarized in Keiosha's email below. Responsive records should be submitted to Keiosha no later than July 20, 2017 along with your certification statement (attached).

Even if you do not have responsive records, please submit the certification statement to Keiosha.

If you have completed but sent directly to Keiosha please let me know. Otherwise please place documents and or certification statement in the appropriate folder located within this

link: [https://drive.google.com/drive/folders/0B\\_J8hldtr1YSQkpiZnN0bjBqSHc](https://drive.google.com/drive/folders/0B_J8hldtr1YSQkpiZnN0bjBqSHc) by end of the day.

Thanks

Timothy J Fisher, Program Lead

National Monuments and Conservation Areas  
National Conservation Lands

20 M Street S.E. (wo-410)  
Washington DC 20003

202-912-7172 Office  
202-604-0706 Cell  
202-245-0050 Fax

[tjfisher@blm.gov](mailto:tjfisher@blm.gov)

----- Forwarded message -----

**From:** Butts, Sally <[sbutts@blm.gov](mailto:sbutts@blm.gov)>  
**Date:** Thu, Jul 6, 2017 at 11:31 AM  
**Subject:** Fwd: FOIA Search Request - 2017-00758  
**To:** Nikki Moore <[nmoore@blm.gov](mailto:nmoore@blm.gov)>, Christopher McAlear <[cmcalear@blm.gov](mailto:cmcalear@blm.gov)>, "Hawks, Robin" <[rhawks@blm.gov](mailto:rhawks@blm.gov)>, "Fisher, Timothy" <[tjfisher@blm.gov](mailto:tjfisher@blm.gov)>, Rachel Wootton <[rwootton@blm.gov](mailto:rwootton@blm.gov)>, Clayton Schmidt <[cfschmidt@blm.gov](mailto:cfschmidt@blm.gov)>, Ilana Cohen <[icohen@blm.gov](mailto:icohen@blm.gov)>, "Mali, Peter" <[pmali@blm.gov](mailto:pmali@blm.gov)>, Cindy Osorto <[cosorto@blm.gov](mailto:cosorto@blm.gov)>, Mara Alexander <[malexander@blm.gov](mailto:malexander@blm.gov)>, Britta Nelson <[bknelson@blm.gov](mailto:bknelson@blm.gov)>  
**Cc:** "Alexander, Keiosha" <[kaalexander@blm.gov](mailto:kaalexander@blm.gov)>

Hi All:

We received the following FOIA request related to Bears Ears National Monument. The date range to search for potentially responsive records is January 20 through March 30, 2017. Please

search for responsive records per the instructions and details in the production guidance document (attached) as summarized in Keiosha's email below. Responsive records should be submitted to Keiosha no later than July 20, 2017 along with your certification statement (attached). Even if you do not have responsive records, please submit the certification statement to Keiosha.

Thanks, Sally

----- Forwarded message -----

From: **Alexander, Keiosha** <[kaalexander@blm.gov](mailto:kaalexander@blm.gov)>

Date: Thu, Jul 6, 2017 at 10:03 AM

Subject: FOIA Search Request - 2017-00758

To: Sally Butts <[sbutts@blm.gov](mailto:sbutts@blm.gov)>

Good Morning Sally,

I hope this email finds you well. We received the following FOIA request from Earthjustice:

"All records dated or created after January 20, 2017 that relate to the Bears Ears National Monument. The requested records include, but are not limited to, communications (and references thereto) between the Department of Interior (DOI) and/or the Bureau of Land Management (BLM), including any member of the transition, landing or "beachhead" teams, and:

1. Members of the House of Representatives and their staff or agents;
2. Members of the U.S. Senate and their staff or agents;
3. Representatives of the White House, including President Trump;
4. Representatives of the state of Utah, including Governor Herbert and his staff;
5. Members of the Utah legislature and their staff or agents.

This request is made on behalf of the Southern Utah Wilderness Alliance, Natural Resources Defense Council, Grand Canyon Trust, Great Old Broads for Wilderness, National Parks Conservation Association, The Wilderness Society, and the Sierra Club (collectively, "the Requesters" unless specified otherwise).

Note that we do not seek any records that have already been published and are in the

public domain or records that DOI or BLM has provided to the Requesters pursuant to previous FOIA requests"

The request, production guidance, and DAD are attached below. The search request was also sent to WO-100. Please let me know if you have any additional questions surrounding this request.

--

Keiosha Alexander  
FOIA Specialist  
Bureau of Land Management  
Direct: (202) 912-7566  
Email: [kaalexander@blm.gov](mailto:kaalexander@blm.gov)

--

Sally R. Butts, J.D., Acting Division Chief  
National Conservation Lands  
Bureau of Land Management  
20 M St. SE, Washington, DC 20003  
Office 202-912-7170; Cell 202-695-5889; Fax 202-245-0050; [sbutts@blm.gov](mailto:sbutts@blm.gov)

I, the \_\_\_\_\_ for the \_\_\_\_\_ located in \_\_\_\_\_  
(insert title) (name of divisional, program or state office)

\_\_\_\_\_, do hereby certify the following to BLM FOIA Specialist Keiosha Alexander, in her capacity as the FOIA Contact tasked with coordinating searches for records responsive to FOIA # BLM-2017-00758.

**Check ALL that apply:**

- ( ) 1. I have reason to believe that the documents transmitted with this certification constitute all documents within the possession or control of the staff in the office.
- ( ) 2. I have determined none of the records that have been produced are sensitive.
- ( ) 3. I have determined that some or all of the records that have been produced are sensitive.

Y/N Records are marked as sensitive.

Y/N Records are sensitive due to a Solicitor sending, receiving, or reviewing the document(s).

- ( ) 4. I have reason to believe that there are no responsive documents within the possession or control of the staff in the office, and accordingly, am not provided any documents.

Information about the search (add lines as needed):

Name/Program Office	Search Terms Used	Search Location (e.g., paper files; email; share drive)

Information about individuals performing work (add lines as needed):

Name/Program Office	Grade	Hours to Search	Hours of Review

Date:

Signature

---

Print name

---

Title



March 30, 2017

**FOIA REQUEST**

Interior Department  
Office of the Secretary FOIA Contact  
Clarice Julka  
MS-7328, MIB  
1849 C Street, NW  
Washington, DC 20240

Bureau of Land Management  
IRM Governance Division  
Attn: FOIA, Washington Office Coordinators  
Ryan Witt  
MS-WO-640  
1849 C Street, NW  
Washington, DC 20240

Via Email: os foia@ios.doi.gov

Via e-mail: blm wo foia@blm.gov

Re: FOIA Request for Records Relating to Bears Ears National Monument

Greetings:

Pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552, and implementing regulations, 43 C.F.R. § 2.1 et seq., I request the following:

*All records dated or created after January 20, 2017 that relate to the Bears Ears National Monument. The requested records include, but are not limited to, communications (and references thereto) between the Department of Interior (DOI) and/or the Bureau of Land Management (BLM), including any member of the transition, landing or "beachhead" teams, and:*

- 1. Members of the House of Representatives and their staff or agents;*
- 2. Members of the U.S. Senate and their staff or agents;*
- 3. Representatives of the White House, including President Trump;*
- 4. Representatives of the state of Utah, including Governor Herbert and his staff;*
- 5. Members of the Utah legislature and their staff or agents.*

This request is made on behalf of the Southern Utah Wilderness Alliance, Natural Resources Defense Council, Grand Canyon Trust, Great Old Broads for Wilderness, National Parks Conservation Association, The Wilderness Society, and the Sierra Club (collectively, "the Requesters" unless specified otherwise).

ROCKY MOUNTAIN 633 17<sup>TH</sup> STREET, SUITE 1600 DENVER, CO 80202

T: 303.623.9466 F: 303.623.8083 RMOFFICE@EARTHJUSTICE.ORG  
WWW.EARTHJUSTICE.ORG

DOI-2020-06 00602

Note that we do not seek any records that have already been published and are in the public domain or records that DOI or BLM has provided to the Requesters pursuant to previous FOIA requests.

For purposes of this request, “records” is consistent with the meaning of the term under FOIA. This includes, but is not limited to, documents of any kind, including electronic as well as paper documents, e-mails, writings (handwritten, typed, electronic or otherwise produced, reproduced or stored), reports, consultations, papers, studies, notes, field notes, drawings, surveys, graphs, charts, photographs, videos, meeting notes or minutes, electronic and magnetic recordings of meetings, maps, GIS layers, GPS, UTM, LiDAR, CDs, and any other compilations of data from which information can be obtained.

Under FOIA, you are obligated to provide records in a readily-accessible electronic format and in the format requested. See, e.g., 5 U.S.C. § 552(a)(3)(B) (“In making any record available to a person under this paragraph, an agency shall provide the record in any form or format requested by the person if the record is readily reproducible by the agency in that form or format.”). We request that you provide the responsive records in electronic .pdf format without any “profiles” or “embedded files.” Please do not provide the records in a single or “batched” .pdf file. To the extent that a subset of the requested records is readily available, please provide that subset immediately while you continue to search for additional records to complete your response.

If you decide to invoke a FOIA exemption in response to this request, please include sufficient information for us to assess the basis for the exemption, including any interest(s) that would be harmed by release. Please include a detailed ledger which includes:

1. Basic factual material about each withheld record, including the originator, date, length, general subject matter, and location of each item; and
2. Complete explanations and justifications for the withholding, including the specific exemption(s) under which the record (or portion thereof) was withheld and a full explanation of how each exemption applies to the withheld material. Such statements will be helpful in deciding whether to appeal an adverse determination. Your written justification may help to avoid litigation.

In addition, if you determine that portions of the records requested are exempt from disclosure, we request that you segregate the exempt portions and mail the non-exempt portions of such records to my attention at the address below within the statutory time limit. 5 U.S.C. § 552(b).

### **Relevant Legal Background on the Freedom of Information Act**

FOIA was designed to provide citizens a broad right to access government records. FOIA’s basic purpose is to “open agency action to the light of public scrutiny,” with a focus on the public’s “right to be informed about what their government is up to.” U.S. Dep’t of Justice v. Reporters Comm. for Freedom of Press, 489 U.S. 749, 773-74 (1989) (internal quotation and

citations omitted). Congress amended FOIA with the Openness Promotes Effectiveness in Our National (OPEN) Government Act of 2007, 110 Pub. L. No. 175, 121 Stat. 2524 (to be codified at 5 U.S.C. § 552). In the Congressional findings to the OPEN Government Act, Congress found that “the American people firmly believe that our system of government must itself be governed by a presumption of openness.” 110 Pub. L. No. 175 § 2(2). In addition, Congress found that “disclosure, not secrecy, is the dominant objective of [FOIA].” *Id.* § 2(4) (quoting *Dep’t of Air Force v. Rose*, 425 U.S. 352 (1976)). Thus, under FOIA, there is a “strong presumption in favor of disclosure.” *Id.* § 2(3) (quoting *Dep’t of State v. Ray*, 502 U.S. 164 (1991)).

In a March 19, 2009 memorandum to the heads of executive departments and agencies, the U.S. Attorney General underscored that agencies should release records requested under FOIA even if the agency might have a technical excuse to withhold them:

First, an agency should not withhold information simply because it may do so legally. I strongly encourage agencies to make discretionary disclosures of information. An agency should not withhold records merely because it can demonstrate, as a technical matter, that the records fall within the scope of a FOIA exemption.

Second, whenever an agency determines that it cannot make full disclosure of a requested record, it must consider whether it can make partial disclosure.

Memo. of Attorney General E. Holder (March 19, 2009).

Under the FOIA Improvement Act of 2016, agencies are prohibited from denying requests for information under FOIA unless the agency reasonably believes release of the information will harm an interest that is protected by the exemption. FOIA Improvement Act of 2016 (Public Law No. 114-185), codified at 5 U.S.C. § 552(a)(8)(A).

### **FEE WAIVER REQUEST**

The Requesters meet the fee waiver requirements of § 552(a)(4)(A) and 43 C.F.R. § 2.45 and 2.48 and therefore request that you provide the documents identified above without charge. However, if a waiver is not granted, please inform the undersigned of the cost of disclosing the above-described records if such fees exceed \$25.00.

#### **I. Background**

A requester is entitled to a fee waiver when “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 [Federal] government and is not primarily in the commercial interest of the requester.” 5 U.S.C. § 552(a)(4)(A)(iii); 43 C.F.R. § 2.45(a) (DOI regulations mirroring the FOIA standard).

In 1974, Congress amended FOIA, replacing the “arbitrary and capricious” standard of review, by which courts are required to grant deference to agencies, with the more rigorous *de novo* review standard. See § 552(a)(4)(A)(vii). The reason for this change is that Congress was concerned that agencies were using search and copying costs to prevent critical monitoring of their activities:

Indeed, experience suggests that agencies are most resistant to granting fee waivers when they suspect that the information sought may cast them in a less than flattering light or may lead to proposals to reform their practices. Yet that is precisely the type of information which the FOIA is supposed to disclose, and agencies should not be allowed to use fees as an offensive weapon against requesters seeking access to Government information....

132 Cong. Rec. S14298 (Sept. 30, 1986) (Sen. Leahy).

FOIA’s amended fee waiver provision was intended specifically to facilitate access to agency records by citizen “watchdog” organizations, which utilize FOIA to monitor and mount challenges to governmental activities. See Better Gov’t Ass’n v. Dep’t of State, 780 F.2d 86, 88-89 (D.C. Cir. 1986). Fee waivers are essential to such groups, which

[R]ely heavily and frequently on FOIA and its fee waiver provision to conduct the investigations that are essential to the performance of certain of their primary institutional activities – publicizing governmental choices and highlighting possible abuses that otherwise might go undisputed and thus unchallenged. These investigations are the necessary prerequisites to the fundamental publicizing and mobilizing functions of these organizations. Access to information through FOIA is vital to their organizational missions....

[The fee waiver] provision was added to FOIA ‘in an attempt to prevent government agencies from using high fees to discourage certain types of requesters and requests,’ in a clear reference to requests from journalists, scholars and, most importantly for our purposes, nonprofit public interest groups.

Id. at 93-94 (quoting Ettlinger v. FBI, 596 F. Supp. 867, 872 (D. Mass. 1984) (emphasis added)). Thus, one of the main goals of FOIA is to promote the active oversight roles of watchdog public advocacy groups, organizations that actively challenge agency actions and policies.

Public interest fee waivers are to be “liberally construed in favor of waivers for noncommercial requesters.” McClellan Ecological Seepage Situation v. Carlucci, 835 F.2d 1282, 1284 (9th Cir. 1987) (quoting 132 Cong. Rec. S14298 (Sen. Leahy)). “[T]he presumption should be that requesters in these categories are entitled to fee waivers, especially if the requesters will publish the information or otherwise make it available to the general public.” Ettlinger, 596 F. Supp. at 873 (quoting legislative history). An agency may not refuse a fee waiver when “there is nothing in the agency’s refusal of a fee waiver which indicates that furnishing the information requested cannot be considered as primarily benefiting the general public.” Id. at 874 (quoting Fitzgibbon v. CIA, Civ. No. 76-700 (D.D.C. Jan. 10, 1977)). “Once



the FOIA requester has made a sufficiently strong showing of meeting the public interest test of the statute, the burden, as in any FOIA proceeding, is on the agency to justify the denial of a requested fee waiver.” Id. (citing 5 U.S.C. § 552(a)(4)(B)).

## II. The Requesters Qualify for a Fee Waiver

The BLM regulations implementing FOIA’s fee waiver provision, 43 C.F.R. § 2.48(a)(1)-(4), identify four specific criteria (with somewhat overlapping subparts) to determine whether a request is in the public interest:

(1) How the subject of the requested records concerns “the operations or activities of the Federal government;”

(2) How the disclosure is “likely to contribute” to public understanding of government 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 the requester’s individual understanding; and

(4) How the public’s understanding of the subject “will be enhanced to a significant extent by the disclosure.”

As shown below, the Requesters meet each of these factors.

### A. The Records Concern the Operations or Activities of the Federal Government (43 C.F.R. § 2.48(a)(1))

The Requesters seek records acquired or created by DOI and BLM regarding the Bears Ears National Monument, which includes federal public lands of national interest managed by the by the U.S. Forest Service and BLM pursuant to federal law.

### B. Disclosure is Likely to Contribute to Public Understanding of DOI/BLM’s Operations or Activities (43 C.F.R. § 2.48(a)(2)(i)-(v))

Public interest groups satisfy this requirement of FOIA where requestors show the “ability to understand and disseminate the information.” Judicial Watch, Inc. v. Dep’t of Justice (Judicial Watch I), 122 F. Supp. 2d 5, 10 (D.D.C. 2000). In addition, a description of past successful methods of informing the public combined with a “firm intent to disseminate” the information has been held to meet this test. Judicial Watch, Inc. v. Dep’t of Justice (Judicial Watch II), 185 F. Supp. 2d 54, 59-60 (D.D.C. 2002) (quoting Judicial Watch I, 122 F. Supp. 2d at 13). “[C]ourts have consistently overturned agency denials of fee waivers when requestors have made a legitimate, objectively supportable showing of using the requested information for scholarly research into political and historical events.” Ettlinger, 596 F. Supp. at 875; see also Weisberg v. Dep’t of Justice, 705 F.2d 1344, 1360 (D.C. Cir. 1983).

To determine whether disclosure of requested information will contribute significantly to public understanding, a guiding test is whether the requester will disseminate the information to a reasonably-broad audience of persons interested in the subject. Carney v U.S. Dept. of Justice, 19 F.3d 807 (2nd Cir. 1994). The Requesters need not show how they intend to distribute the information, because “[n]othing in FOIA, the [agency] regulation, or our case law require[s] such pointless specificity.” Judicial Watch, 326 F.3d at 1314. It is sufficient for the requester to show how it distributes information to the public generally. Id.

The Requesters do not seek the documents for their own benefit, but seek the records to provide additional, new information to the public about DOI and BLM operations. Disclosure will foster a better public understanding of the DOI and BLM’s decision-making process and intent regarding ongoing and future management of the Monument. See 43 C.F.R. § 2.48(2)(iii) (requiring the requester to show that the “disclosure will contribute to the understanding of a reasonably broad audience of persons interested in the subject, as opposed to” its own understanding). The Requesters have extensive experience disseminating public records and analysis to the public, media and decision makers and they routinely communicate with the public and the media on issues related to the protection of public lands and sites of historic, cultural and scientific importance, and Bears Ears, specifically. As discussed below, numerous articles, press releases, and websites attesting to the Requesters’ expertise on the Bears Ears are found on the internet and on their websites. The Requesters intend to broadly disseminate the records, or summaries of the records, to the media, to their members and to the public.

More specifically, the Grand Canyon Trust, with over 4,000 members, was established in 1985 to protect and restore the Colorado Plateau. As part of its mission, it also “supports tribal communities in their efforts to protect natural and cultural resources,” including those now protected within the Bears Ears National Monument.<sup>1</sup> Portions of the Trust’s website are dedicated to informing its members and the public about Bears Ears National Monument, opportunities to learn more about the land, and opportunities for action and public input on the designation decision. It has included articles about Bears Ears in its member magazine. Executive Director Bill Hedden has penned editorials about Bears Ears in the Salt Lake Tribune,<sup>2</sup> and his words, and those of other Trust officers, have appeared in many regional articles and publications.<sup>34</sup>

<sup>1</sup> <http://www.grandcanyontrust.org/native-america>

<sup>2</sup> <http://www.sltrib.com/opinion/3883842-155/op-ed-tribes-involvement-would-make-bears> ;  
<http://www.sltrib.com/opinion/4732301-155/op-ed-midnight-monument-no-utah-leaders>

<sup>3</sup> <http://grandcanyontrust.nonprofitsoapbox.com/bears-ears> ;  
<http://www.grandcanyontrust.org/blog/bears-ears-needs-you> ;  
<http://grandcanyontrust.nonprofitsoapbox.com/protectbears-ears> ;  
<http://www.grandcanyontrust.org/bears-ears-cultural-landscape> ;  
<http://www.grandcanyontrust.org/protecting-our-canyonlands> ;  
<http://www.grandcanyontrust.org/advocatemag/fall-winter-2016/proposed-bears-ears-national-monument>

<sup>4</sup> <http://www.sltrib.com/opinion/4732301-155/op-ed-midnight-monument-no-utah-leaders> ;  
<http://www.hcn.org/articles/in-love-with-the-wild-thoughts-on-public-lands-in-21st-century-Escalante-Grand-Canyon-Bears-Ears-wilderness>

Great Old Broads for Wilderness, founded in 1989 with a mission of protecting wilderness and wild places for future generations, now has 36 local chapters throughout the nation, and over 5,000 members and supporters. It organizes recreational and volunteer events in iconic wild places – including a camping trip in the Bears Ears – designed to educate the public about the history of the area and the proposed monument protections.<sup>5</sup> It has voiced its support for Bears Ears as a national monument to the BLM, and has issued press releases detailing opportunities for public input.<sup>6</sup>

Since its founding in 1919, the National Parks Conservation Association has grown to a membership base of over one million. It actively informs and organizes its members and engages policy-makers to protect iconic wild lands and enhance the National Park System. It widely distributed information regarding Bears Ears and opportunities for public input on the proposed monument through its website, and through public action alerts,<sup>7</sup> and has been recognized as an impassioned advocate for protecting the Bears Ears area.<sup>8</sup>

The Sierra Club is one of the oldest and most influential environmental organizations in the United States. Its mission includes, among other things, engaging its members and the public to protect public lands and wildlife habitat. It is a longstanding and active public advocate on behalf of public lands, national monuments, and the Bears Ears National Monument designation. It has disseminated extensive information about Bears Ears to its approximately 45,000 members and supporters, as well as to the general public through press releases, its website, published opinion pieces, and alerts to members.<sup>9</sup>

<sup>5</sup> [http://www.greatoldbroads.org/?event=bears-ears-broadwalk&event\\_date=2016-09-22](http://www.greatoldbroads.org/?event=bears-ears-broadwalk&event_date=2016-09-22) ; <https://www.torreyhouse.org/single-post/2016/10/13/Bears-Ears-and-the-Great-Old-Broads>

<sup>6</sup> <http://www.greatoldbroads.org/press-releases/great-old-broads-for-wilderness-joins-native-american-tribes-to-call-for-president-obama-to-designate-bears-ears-as-a-national-monument/>

<sup>7</sup> <https://www.npca.org/events/136-southern-utah-conservation-public-meeting#sm.0001u1aou6r5kfpc10d7drpvkmq5x> ; <https://www.npca.org/articles/1437-president-preserves-iconic-canyon-country-with-bears-ears-national-monument#sm.0001u1aou6r5kfpc10d7drpvkmq5x> ; <https://www.npca.org/advocacy/46-one-of-our-newest-national-monuments-is-at-risk#sm.0001u1aou6r5kfpc10d7drpvkmq5x> ; [https://www.washingtonpost.com/national/health-science/with-new-monuments-in-nevada-utah-obama-adds-to-his-environmental-legacy/2016/12/28/e9833f62-c471-11e6-8422-eac61c0ef74d\\_story.html?utm\\_term=.a5031b2ba208](https://www.washingtonpost.com/national/health-science/with-new-monuments-in-nevada-utah-obama-adds-to-his-environmental-legacy/2016/12/28/e9833f62-c471-11e6-8422-eac61c0ef74d_story.html?utm_term=.a5031b2ba208)

<sup>8</sup> <http://www.nationalparkstraveler.com/2016/12/bears-ears-jigsaw-piece-southeastern-utahs-national-park-landscape-declared-national>

<sup>9</sup> <http://www.sierraclub.org/michael-brune/2016/07/its-time-protect-bears-ears> ; <http://www.sierraclub.org/sierra/2016-4-july-august/green-life/fight-protect-bears-ears> ; <http://www.sierraclub.org/lay-of-the-land/2017/02/stand-bears-ears> ; <http://www.sierraclub.org/sierra/green-life/antiquities-act-has-paved-way-for-some-america-s-most-awesome-national-parks-now> ; <https://sierra.secure.force.com/actions/National?actionId=AR0072730> ; <https://medium.com/@utahsierraclub/protection-for-bears-ears-at-last-b7e2d0c03e7e> ;

Since 1983, the Southern Utah Wilderness Alliance (SUWA) has worked to protect the outstanding redrock wilderness of the American southwest, and has since become Utah's most prominent environmental organization. SUWA worked with the Bears Ears Inter-Tribal Coalitions in the campaign to create Bears Ears National Monument, and its website contains copious information about the Monument. SUWA officials have been quoted extensively regarding Bears Ears in the media.<sup>10</sup>

The Natural Resources Defense Council (NRDC) is an environmental non-profit organization that is in part organized and operated to gather and publish or transmit news to the public. NRDC publishes original reporting of environmental news stories on its website, <http://www.nrdc.org>, along with blogs and staff analyses. NRDC has published multiple stories in Bears Ears on its website,<sup>11</sup> as well as publicizing issues related to the monument on Facebook and Twitter. NRDC staffmembers and spokespeople have been quoted in national news coverage and have written op-eds regarding Bears Ears and the need for protections there.<sup>12</sup> NRDC's more than one million members and online activists constitute a large audience of people interested in the subject, and when combined with NRDC's communications to the public at large, NRDC has the capacity to reach a very broad audience. Further, NRDC has a long history of analyzing and incorporating information obtained through FOIA into reports, articles, and other communications, and it is well prepared to convey to the public any relevant information it obtains through this records request.

The Wilderness Society (TWS) is a non-profit corporation devoted to preserving wilderness, forests, parks, rivers, deserts, and shorelands, and committed to fostering an American land ethic. Its mission is to protect wilderness and inspire Americans to care for our

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[http://www.huffingtonpost.com/michael-brune/on-the-road-to-red-rock\\_b\\_7625292.html](http://www.huffingtonpost.com/michael-brune/on-the-road-to-red-rock_b_7625292.html) ;  
<http://www.climbing.com/news/in-depth-bears-ears-and-the-ongoing-battle-to-protect-us-climbing-areas/> ;  
<http://www.ecowatch.com/bears-ears-gold-butte-2169858371.html> ;

<sup>10</sup> <https://suwa.org/issues/bears-ears/> ; <https://suwa.org/category/bears-ears/> ;  
<https://suwa.org/category/antiquities-act/> ;  
<http://www.eenews.net/stories/1060037480> ; <http://www.ksl.com/?nid=148&sid=42708529> ;  
<http://www.deseretnews.com/article/865669559/A-Bears-Ears-primer-How-Obamas-pen-could-affect-southern-Utah.html> ;  
<http://www.grandcanyontrust.org/joint-statement-draft-public-lands-initiative> ;  
<http://www.sltrib.com/opinion/3499388-155/op-ed-ple-fails-to-protect-americas> ;

<sup>11</sup> <https://www.nrdc.org/stories/ancient-place-just-secured-membership-americas-culture-club> ;  
<https://www.nrdc.org/experts/sharon-buccino/protection-wanted-and-bears-ears-monument-delivers> ; <https://www.nrdc.org/media/2016/161228> ; <https://www.nrdc.org/experts/sharon-buccino/bears-ears-we-trust-tribally-co-managed-national-monument-offers-protection>.

<sup>12</sup> See, e.g., <http://time.com/4454746/president-bears-ears-monument/> ;  
<http://www.nytimes.com/2016/07/04/opinion/national-monuments-tell-americas-story.html>.

wild places. TWS's interest in obtaining the requested information is to advance TWS's understanding, as well as that of members of the public, of the nature of the designation of Bears Ears National Monument. TWS has been active in the designation of the Bears Ears National Monument for years, including asking our members and supporters to advocate for protecting the Bears Ears region.<sup>13</sup> TWS has also been spokesperson for the protection of the Bears Ears National Monument in the news media.<sup>14</sup> As a not-for-profit organization, TWS is not involved in organization or trade; TWS does not seek this information for commercial use.

As demonstrated above, each of the Requesters has the expertise and capacity effectively to analyze and distribute information contained in records responsive to this request to the interested public. See 43 C.F.R. § 2.48(a)(2)(iv-v). Accordingly, they have satisfied this prong of the fee waiver test.

C. Disclosure is Likely to Contribute Significantly to the Understanding of a Reasonably Broad Audience of Persons Interested in the Protection of Historic Sites and Bears Ears National Monument, Beyond the Requesters' Individual Understanding (43 C.F.R. §2.48(a)(3)(i)-(iv))

The Requesters will contribute significantly to the public understanding of the federal government's decision-making process regarding protection of the Bears Ears National Monument because the records sought are new and have not been disclosed to the public. See 43 C.F.R. § 2.48(3)(i), (iv). The records may also confirm, clarify or contradict documents or statements that are in the public domain and/or which DOI and BLM have previously released to the public. 43 C.F.R. § 2.48(3)(ii)-(iii). Indeed, because the requested records have not been released and are not in the public domain, the public does not currently have an ability to easily evaluate them. See *Cnty. Legal Servs. v. HUD*, 405 F.Supp.2d 553, 560 (D. Pa. 2005) (because requested records "clarify important facts" about agency policy, "the CLS request would likely shed light on information that is new to the interested public."). As the Ninth Circuit observed in *McClellan*, 835 F.2d at 1286, "[FOIA] legislative history suggests that information [has more potential to contribute to public understanding] to the degree that the information is new and supports public oversight of agency operations... ." Accordingly, the release of new and/or clarifying information regarding DOI and BLM's planning and protection for Bears Ears National Monument will increase the level of public understanding beyond that which existed prior to disclosure. 43 C.F.R. § 2.48(a)(3)(iii).

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<sup>13</sup> <http://wilderness.org/tell-president-obama-%E2%80%9Cbears-ears%E2%80%9D-region-utah-needs-protection-drilling-mining-and-vandalism>  
<http://wilderness.org/bears-ears%E2%80%94dont-let-special-place-be-erased>  
<http://wilderness.org/photo-gallery-utahs-bears-ears-region-natural-cultural-treasure>  
<http://wilderness.org/press-release/bears-ears-region-and-public-lands-initiative-time-national-monument>

<sup>14</sup> <http://www.sltrib.com/home/4238931-155/obamas-environmental-legacy-some-24-national>  
<http://www.eenews.net/stories/1060023763>

The Requesters will use the records and information contained therein to better inform the public, legislators, and the organizations' members and staff about the factors influencing DOI and BLM's decisions concerning the future management and status of Bears Ears National Monument. The numerous articles cited in this request concerning the Bears Ears National Monument attest to the broad public interest in this subject.

Once the information is made available, the Requesters will analyze it and present it to its members, online activists and the general public in a manner that will meaningfully enhance the public's understanding of DOI and BLM's management, decisions and actions regarding the Bears Ears National Monument and the objects described in the proclamation that established the Monument. Through the Requesters' synthesis and dissemination, disclosure of information contained and gleaned from the requested records will contribute not just to the Requesters' understanding, but to the understanding of a broad audience of persons who are interested in the subject matter. Ettlinger, 596 F. Supp. at 876 (benefit to a population group of some size distinct from the requester alone is sufficient); Carney, 19 F.3d at 815 (applying "public" to require a sufficient "breadth of benefit" beyond the requester's own interests); Cnty. Legal Servs. v. Dep't of Hous. & Urban Dev., 405 F.Supp.2d 553, 557 (E.D. Pa. 2005) (in granting fee waiver to community legal group, court noted that while the requester's "work by its nature is unlikely to reach a very general audience," "there is a segment of the public that is interested in its work"); 43 C.F.R. § 2.48(a)(3). Accordingly, the Requesters have met this prong of the fee waiver test.

D. The Public's Understanding of the DOI and BLM's Current and Future Management of the Bears Ears National Monument Will be "Enhanced to a Significant Extent" by the Disclosure (43 C.F.R. §2.48(a)(4))

The legislative history of FOIA makes clear that the 'significance' test is met where, as here, the information requested will support "public oversight of agency operations":

A requester is likely to contribute significantly to the public understanding if the information disclosed is new; supports public oversight of agency operations; or otherwise confirms or clarifies data on past or present operations of the government.

132 Cong. Rec. H9464 (Reps. English and Kindness); see also McClellan, 835 F.2d at 1284-86.

The Requesters address much of this prong of the test above. Additionally, the requested records will support public oversight by allowing the public to better understand BLM's planning and management process regarding Bears Ears National Monument, and BLM's implementation of the proclamation that established the Monument. Debate and oversight of the DOI and BLM's planning and management processes and decisions will be better informed by the release of these records, none of which have been divulged or presented to the public. See 43 C.F.R. § 2.48(a)(4)(b).

E. The Requesters Have No Commercial Interest in the Records.

The formal fee assessment/waiver guidelines established by the Office of Management and Budget state that:

The term ““commercial use’ request” refers to a request from or on behalf of one who seeks information for a use or purpose that *furtheres the commercial, trade, or profit interests* of the requester or the person on whose behalf the request is made.

52 Fed. Reg. 10,012, 10,017-18 (Mar. 27, 1987) (emphasis added).

Access to government records, disclosure forms, and similar materials through FOIA requests is essential to the Requesters’ role of educating the general public. All of the organizations are nonprofit conservation organizations which collectively have more than one million members and additional online activists dedicated to the protection of public lands, wild places, wildlife, and sites of historic and scientific significance. The Requesters have no commercial interest in the disclosure of the records, and will realize no commercial benefit or profit from the disclosure of the requested records. (In light of absence of commercial interest, the balancing test set forth in 43 C.F.R. § 2.48(a)(4)(b)(2)-(3) is inapplicable.)

As demonstrated above, the Requesters meet each of the statutory and regulatory requirements for a fee waiver.

**REQUEST FOR EXPEDITED PROCESSING**

We request expedited processing of this request pursuant to 43 C.F.R. §2.10 and §2.20 because there is an urgent need to inform the public concerning the DOI and BLM’s intended management and protection of the Bears Ears National Monument and the Requesters will disseminate the information as a primary part of their organizations’ missions. Further, the proclamation establishing the Monument directed the BLM to initiate planning for the Monument that would protect its objects of scientific and historic importance and the Requesters intend to participate in that process, both as members of the public and, in some cases, as members of a stakeholders’ advisory group, also established by the Proclamation. Threats to the conservation of the Monument are immediate and there is an urgent need for information about BLM’s planning and its initiation of immediate protective measures. Finally, new reports indicate that Secretary Zinke will visit Utah soon to review the Monument and may make decisions about its future management and protection in the near future, adding to the urgency of the information sought. The public has a right to know what information and communications Secretary Zinke and the BLM have received on this topic.

The undersigned certifies that the reasons for seeking expedited review are true and correct to the best of my knowledge or belief.

Thank you for your prompt attention to this request. I look forward to your response as soon as possible, but not later than 20 days, as required by law. If you have any questions in this matter, please contact me at 303-996-9621.

Sincerely,

A handwritten signature in black ink, appearing to read "Heidi McIntosh", with a stylized flourish at the end.

/s/

Heidi McIntosh  
Managing Attorney





## United States Department of the Interior

BUREAU OF LAND MANAGEMENT  
Washington, D.C. 20240  
<http://www.blm.gov>



July 6, 2017

To: WO-400

From: Jeff Krauss, Division Chief  
External Affairs

Re: FOIA request from Heidi McIntosh, Earthjustice

The Bureau of Land Management has received the following request for information under the FOIA. Below are instructions to assist with your search.

Staff should search for:

“All records dated or created after January 20, 2017 that relate to the Bears Ears National Monument. The requested records include, but are not limited to, communications (and references thereto) between the Department of Interior (DOI) and/or the Bureau of Land Management (BLM), including any member of the transition, landing or “beachhead” teams, and:

1. Members of the House of Representatives and their staff or agents;
2. Members of the U.S. Senate and their staff or agents;
3. Representatives of the White House, including President Trump;
4. Representatives of the state of Utah, including Governor Herbert and his staff;
5. Members of the Utah legislature and their staff or agents.

This request is made on behalf of the Southern Utah Wilderness Alliance, Natural Resources Defense Council, Grand Canyon Trust, Great Old Broads for Wilderness, National Parks Conservation Association, The Wilderness Society, and the Sierra Club (collectively, “the Requesters” unless specified otherwise).

Note that we do not seek any records that have already been published and are in the public domain or records that DOI or BLM has provided to the Requesters pursuant to previous FOIA requests.”

**Date range of Search:** January 20, 2017 – March 30, 2017

**Deadline for Search Response:** July 20, 2017

**Deadline for submission of Documents:** July 20, 2017

Full and complete copies of any and all requested documents should be produced promptly in accordance with 5 U.S.C. 552(a)(3)(D).

*Any questions regarding this FOIA request should be directed to: Keiosha Alexander  
[kaalexander@blm.gov](mailto:kaalexander@blm.gov) or (202) 912 – 7566.*

**Step-by-step instructions:**

You are responsible for ensuring that each employee in the directorate, *who may have potentially responsive records*, receives a copy of this Production Guidance and is instructed to search for these records.

- 1) Identify which parts of your organization may have responsive records based on the description above. Other employees do not need to conduct a search.
- 2) Send the employee(s) or supervisor(s) instructions to search for records. Contact **Keiosha Alexander** to arrange for a search for employees who have left the Department of the Interior.

If you have responsive records located on a non-official email account that have not already been carbon copied or forwarded to your official email account, you must 1) forward them to your official email account if you are within the 20-day window and provide them to the FOIA Office as part of your search response or 2) provide them to the FOIA Office from your non-official email account as part of your search response.

- 3) At the same time, ask for documentation of the time to search, terms used and location of search. Please use the attached *WO DAD 2017-00758.docx (Form 1278-2)*.
- 4) On or before **July 20, 2017**, send the records, if any, to **Keiosha Alexander**. If no records are located skip to step 5.
- 5) On or before **July 20, 2017**, send the completed *WO DAD2017-00758.docx* (documentation of the search). If you asked multiple people to search, please combine all of the forms for signature by the Deputy Assistant Director.

All completed certifications and records should be sent to **Keiosha Alexander** electronically or delivered to Workspace # 6273, 20 M Street.