

**UNITED STATES DEPARTMENT OF THE INTERIOR  
BUREAU OF LAND MANAGEMENT  
COLORADO STATE OFFICE  
2850 YOUNGFIELD STREET  
LAKEWOOD, COLORADO 80215-7093**

In Reply Refer To:  
1220/1278/1872 (CO-954) P

April 12, 2012

EMS TRANSMISSION 04/12/2012  
Instruction Memorandum No. CO-2012-021  
Expires: 09/30/2013

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.<sup>1</sup> 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 Colorado employee may testify in or produce records for any proceeding to which the United State 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)

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<sup>1</sup> Sometimes employees are approached and asked to provide a statement or deposition to be used in a court proceeding or to provide documents without ever receiving a subpoena or *Touhy* request. The guidance provided herein applies also to those situations.

have been received. If the State FOIA Coordinator, Debbie Suehr, is not available, contact the State Records Manager, Carl Guerette. Their contact information is as follows:

State FOIA Coordinator: [dsuehr@blm.gov](mailto:dsuehr@blm.gov) (303) 239-3688 Fax (303) 239-3933  
 State Records Manager: [cguerette@blm.gov](mailto:cguerette@blm.gov) (303) 239-3930 Fax (303) 239-3933

The State FOIA Coordinator will fax (or scan/e-mail) a copy of the subpoena and/or *Touhy* Request to the Colorado Regional Solicitor's Office (with a follow-up telephone call to that office).<sup>2</sup> 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 Colorado Regional Solicitor's Office.

**Timeframe:** This policy is effective immediately.

**Budget Impact:** No budget impacts are anticipated.

**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, 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.

**Directives Affected:** This IM serves as interim guidance to a new Colorado BLM Manual Supplement 1278, External Access to BLM Information.

**Coordination:** This IM was coordinated through the Colorado Regional Solicitor's Office, the State FOIA Coordinator, the State Records Administrator, and the Information Management Officer.

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<sup>2</sup> If an employee receives an informal request (i.e., not a formal subpoena) to participate and/or produce documents in a court proceeding, contact the Regional Solicitor's Office immediately. The Solicitor's Office will contact the party making the request and advise them of the proper procedures to follow prior to making such a request.

**Contact:** For more information concerning this IM, contact Deborah Suehr, State FOIA/Privacy Act Coordinator, at (303) 239-3688.

Signed by:  
John Mehlhoff  
Acting State Director

Authenticated by:  
Cathy Cooney  
Branch of IRM & Access