



United States Department of the Interior



BUREAU OF LAND MANAGEMENT

Idaho State Office
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In Reply Refer To:
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September 26, 2013

EMS TRANSMISSION: 09/27/2013
Instruction Memorandum No. ID-2013-043
Expires: 09/30/2014

To: All Employees

From: Acting State Director

Subject: Processing of *Touhy* Requests or Subpoenas

Program Area: Freedom of Information Act (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 *Touhy* Request is required by the Department of the Interior (DOI) 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 DOI’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 Idaho Bureau of Land Management (BLM) 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 and/or a *Touhy* Request (as described above) he/she must immediately notify their supervisor and scan/e-mail (or fax) a copy of the request to the State FOIA Coordinator. A follow-up telephone call by the employee or employee’s supervisor to the State FOIA Coordinator (or the State FOIA Specialist) is required to ensure the document(s) have been received. If the State FOIA Coordinator is not available, contact the State FOIA Specialist. As a third option, contact the State Records Administrator if no FOIA personnel are available. Their contact information is as follows:

Name	Position	E-mail Address	Telephone Number	Fax Number
Gloria Van Noy	State FOIA Coordinator	gvannoy@blm.gov	(208) 373-3947	(208) 373-3904
Yadyra Esparza	State FOIA Specialist	yesparza@blm.gov	(208) 373-3931	(208) 373-3904
Lorraine Graves	State Records Administrator	lgraves@blm.gov	(208) 373-3946	(208) 373-3904

Immediately upon receipt, the State FOIA Coordinator will hand carry a copy of the subpoena or *Touhy* Request to the State Director's Office and the appropriate Deputy State Director. The State FOIA Coordinator will then scan/e-mail a copy of the subpoena and/or *Touhy* Request to the Boise Field Solicitor's Office and will follow-up with a telephone call to ensure delivery.

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 requester 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 continues to be in effect and supersedes IM No. ID-2012-041.

Background: Except for Federal court civil proceedings in which the United States is a party; criminal cases before Federal, State, and Tribal courts involving BLM employees and records; and Congressional proceedings, it is the DOI's general policy not to allow its employees to testify or produce DOI records either upon request or by subpoena. However, there are certain instances where the DOI will consider whether to allow testimony or production of records. The DOI regulations for obtaining employee testimony and/or production of records are contained in the Code of Federal Regulations at 43 CFR Part 2, Subpart L, §§ 2.280 through 2.290. 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.

Contact: For additional information, please contact Gloria Van Noy, State FOIA Coordinator, at (208) 373-3947 or Yadyra Esparza, State FOIA Specialist, at (208) 373-3931.

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

Signed by:
Gary Hunter for Timothy M. Murphy

Authenticated by:
Peggy Ann Hallman, Administrative Specialist

Attachment:
[43 CFR Part 2, Subpart L, §§ 2.280 through 2.290](#) (5 pp)