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Bedminster, New Jersey 07921
November 10, 2009

Freedom of Information Act Appeals Officer
Department of the Interior
Office of the Solicitor
1849 C Street, NW, MS 6556
Washington, DC 20240

Freedom of Information Appeal
Re: FOIA Request IMRO 2009-145

Dear Sir:

I am writing to appeal....

- the amount of information I received on November 9, 2009, for my FOIA request dated July 31, 2009, and then later modified in letters dated September 8, 2009, and October 24, 2009, and November 7, 2009.
- the accuracy or quality of the information I just received.
- and how the 23 pages I have received should be characterized: as part of the 100 pages of copying to which I am entitled for no cost, or towards the \$30.00 threshold before which applicants are not charged. (This becomes an issue only if more information is forthcoming from this appeal.)

Let me address each of these concerns:

The Amount of Information:

As you can read in my letters, I had been instructed by Diane Cooke--- the FOIA officer of the NPS when I first filed my formal FOIA request--- that I should send everything to the Intermountain Regional FOIA Officer, Jack O'Brian, instead of to Mesa Verde National Park. And this I did.

After receiving a response from Jack O'Brian dated August 28, 2009, that it would take 29 hours to process my request, that I would have to pay for every hour more than the two hours of free search and review time to which I was entitled, and that I would have to send the National Park Service a check for \$1593 if I wanted my RFI to proceed, I wrote back that I wanted Mesa Verde National Park to spend no more than two hours on my request, and that I had prioritized my request and wanted the park to start with my first request for information and work their way down the list until my two hours were exhausted.

There were a number of letters between the time when I sent my first revised and modified FOIA request dated September 8, 2009 and the final response I received yesterday from Charis Wilson, the current Acting FOIA Officer for the NPS who has temporarily replaced Diane Cooke. From those letters, especially my fourth cover letter dated November 7, 2009, you can see that I continued to feel Mesa Verde National Park and the Intermountain Regional Office were not following the letter and the spirit

of the President's memorandum dated January 21, 2009, or the memorandum of the Secretary of the Interior dated July 2, 2009, or the actual regulations outlined in 43 CFR 2.18.

In contrast, I believe they were simply delaying the process; they were using misinterpretations and misrepresentations of 43 CFR 2.18 to frustrate and discourage me; and they did everything they could to be uncooperative, to avoid a presumption of openness, and to deny and obstruct the spirit and directives contained in the President's memorandum, the Secretary of Interior's memorandum, and also the memorandum of the Attorney General, dated March 19, 2009.

At first I had thought the delays and misrepresentations were initiated and being directed by Larry Wiese, the former Superintendent of Mesa Verde National Park, who announced his early retirement from the Park Service a week after my second and modified RFI was received by Jack O'Brian. (Larry Wiese announced his retirement on September 21, 2009 and it was effective as of November 2, 2009.)

But the final formal response to my request ----processed after Larry Wiese had left and during the management of the Acting Superintendent, Bill Nelligan---seems to indicate that Mesa Verde continues to want to delay, resist, and obfuscate any attempt at obtaining the most basic financial information about how Mesa Verde National Park has spent its budget. It seems that maybe the problem wasn't just with Larry Wiese, but with a corporate, systemic resistance to openness and transparency, and an unwillingness for some national parks to follow the commands and dictates of the President, the Secretary of Interior, and the Attorney General.

In the final, formal response to my RFI, you can read how only three of my seven requests could be fulfilled in the two hour time limit. Quite frankly, it is virtually impossible to imagine how it took two hours to process the information I was given.

- The financial 10-575's for the fiscal years 2007, 2008, and 2009 all have time dates on them---- and the time dates indicate that each report took only two minutes to process. They are standard financial reports, they are easily run, and they are processed regularly.
- The vendor report for CyArk and/or the Kacyra Family Foundation is one page, it was queried and processed just 33 minutes earlier than the financial reports were queried and processed.
- Finally, the information about the sister park relationships---the signed "Sister Park Declaration"---can be found on Google by simply looking for "mesa verde sister parks." It takes about three minutes; it comes up as the first possible link.

With this time stamp information, I can only ask how long did it really take to search and review records to locate the information that was sent to me? Could it possibly have taken two hours to gather together what in my mind should have taken no more than 30 to 45 minutes at the most---and that would have included printing the information, putting it in an envelope, and sending it to me or to Charis Wilson in Denver?

To be sure, if this kind of process and response is allowed, consider the potential for abuse. Parks could develop incredibly inflated estimates for some inquiries---especially those to which they really do not want to respond. When the requestors hesitate to pay hundreds of dollars for basic public information, and when they put two hour limits on their requests, then the park can use excessive and exaggerated amounts of time to process the most basic request. Hopefully you can see there is a bad precedent here.

Hopefully you will agree that no judge, no mediator, or any jury would agree to or accept the presumption that it took Mesa Verde National Park two hours to process the limited amount of information I received.

The Accuracy and Quality of the Information I Received:

I am not sure the information I was given was the most accurate.

- Not being completely familiar with federal accounting procedures and systems, I am not sure if the 10-575's are the most accurate way to present "the final and completed financial statements pertaining to and detailing the final and exact expenditures of each and every local account...." for the fiscal years of 2007, 2008, and 2009. The federal government does use the AFS-II system and the FFS---which often is the actual financial accounting system. Usually 10-575's are used more often as a planning tool. That may explain why there are so many discrepancies between a 10-575 for fiscal year 2009 YTD that Bill Nelligan sent me this summer, and the final version I received yesterday. There are so many changes in the numbers and so many variations, that one can't help but wonder....how much really was spent during each of those years? Are the 10-575's the best format for displaying that information, and are they "closed" and final statements?
- The information on the payments made to CyArk or to the Kacyra Family Foundation also is suspicious. In 2006, CyArk did some work at the park. Some of the work was reimbursed from NCPTT funds (National Center for Preservation Technology and Training), but some of CyArk's equipment was rented from CyArk and, I believe, those equipment rentals were paid for by the park. So I question whether the vendor report that indicates during the last five years only \$5,000 was paid to CyArk, or to its parent organization, the Kacyra Family Foundation, is accurate.
- The information I was given about sister park relationships also is questionable. The "Sister Park Declaration" that was sent probably is accurate. But going back to Google, the link to the pages I received is followed almost immediately by another link to the NPS's Office of International Affairs website. This site lists only one sister park relationship for Mesa Verde NP...and it is with Caracol Archeological Reserve in Belize. In Mesa Verde National Park's "First Annual Centennial Strategy for Mesa Verde National Park" dated August 2007, it says "...wereengaged our sister parks in Belize, Mexico and Machu Pichu." And when asked, the education specialist at Mesa Verde seems to remember having done work for four different sister parks. So what is the final count? How many sister park relationships are there? And is it appropriate for the park to respond to a formal FOIA request with such questionable information?

How should the 23 pages of information I have received to date be characterized: as part of the first 100 pages of copying to which I am entitled for no cost, or towards the \$30.00 threshold before which applicants are not charged?

Of course, this becomes an issue only if I am successful in this appeal. Nevertheless, it also gets to the basic interpretation of 43 CFR 2.18 and how FOIA Officers in the National Park Service are interpreting it and how they are representing it. To me, it is fairly simple. Any citizen can make a request; they can get two hours of search and review time for free; and they can get 100 pages of copying for free. To avoid de minimis payments, 43 CFR allows fees for search and review, and fees for copying to accumulate to a \$30.00 threshold before a requestor is obligated to reimburse the government for his or her FOIA request.

Consequently, the 23 pages of copying I have received should count towards my first 100 page of free copying, and not be characterized as the first \$2.99 of my allowable \$30.00 threshold. Again, this is important only if I am successful in this appeal...since if more copying is done, I hope the counting starts in the midst of my first allowable 100 pages.

Finally, I ask you to consider ordering the management at Mesa Verde National Park to fulfill my entire request for no additional charges for the following reasons:

- As you can read in my fourth cover letter to Charis Wilson dated September 7, 2009, I believe my second modified request of September 8, 2009, actually was in order, it should have been processed without delay, and the final response I received was way over due. As such, the department was in violation of its own FOIA regulations; it was in violation of the rules and procedures that have been established for FOIA inquiries throughout the government; and simply stated, it consciously and deliberately tried to frustrate and delay processing a legitimate FOIA request.
- Secondly, it seems ironic that part of the information for which I may have to pay should already be available on the internet. Some of the information which I have requested---like the final statements of the expenditure for fiscal years 2007, 2008, and 2009---should have been already available as part of a proactive response to the directives and suggestions contained in the President's memorandum of January 21, 2009, the Attorney General's memorandum of March 19, 2009, or to the *FOIA Post* promulgated by the Department of Justice's Office of Information Policy in which it is written: "...agencies should anticipate interest in records, should set up systems for identifying and retrieving them, and should post them on their website. Information about agency operations and decisions should be available to the public online." (posted April 17, 2009) Essentially I am asking: should citizens have to pay for information which is not readily available only because agencies and departments of the government have not responded to the directives and memorandums which have directed that the information should be made readily available? If Mesa Verde National Park had followed the directives and memorandums of the President, the Attorney General, and the Secretary of the Interior, if they had posted the most basic financial information I had asked for in my first letter to Linda Lanier, dated July 1, 2009 on the internet, or if they had simply responded by taking four minutes and printing out the financial statements for 2007 and 2008, we probably would never have wasted so many hours and hours going through this process. But now we have, and I am asking you to grant me my full request without delay and for no further expense.
- Finally let me say that if you rule in my favor, much of the information I have requested will already have been compiled at the request of the Office of Inspector General, and it already will be in document form or in some kind of digital format. As such, it really should take very little time to search for the information and provide copies for me.

For these reasons, I ask you to consider my appeal, I ask you to read all the correspondence related to this case either by reading the copies I have enclosed or by reading them on the internet at www.schundler.net/FOIA.htm , and I ask you to rule in my favor.

Respectfully submitted,

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