



File Code: 6270
2014-FS-WO-02076-F (HRM)
Date: February 20, 2014

Mr. Kit Douglass
Staff Counsel
Public Employees for Environmental
Responsibility (PEER)
2000 P Street, NW Suite 240
Washington, DC 20036

Email: kdouglas@peer.org

Dear Mr. Douglass:

This letter is to request more information relating to your Freedom of Information Act (FOIA) request dated February 14, 2014 and received by the Washington Headquarters FOIA Service Center, Office of Regulatory and Management Services (ORMS) on February 18, 2014. Your request was assigned FOIA Control Number 2014-FS-WO-02076-F. You are requesting the following:

“...records and/or documents concerning acts of violence or threats against U.S. Forest Service (USFS) employees. Specifically, we request the following: A summary of all incidents of violence or threats against USFS employees that occurred between January 1 and December 31, 2013. The summary should include the date, location and nature of the incident or threat together with a summary of what, if any, outcomes stemmed from the incident or threat (e.g., arrest, conviction, ongoing investigation). PEER is seeking this information as part of its study of the extent of violence and intimidation directed against public resource employees. Release of the requested information is in the interest of the general public, in order for the public to understand the true dimensions of, and motivations for, confrontations with employees and against facilities of public agencies.”

In your request, you stated reasons that you believe you should be granted the waiver based on duplicate general statements, e.g. "Release of the requested information is in the interest of the general public"; "disclosure of the information is in the public interest . . . and is not primarily in the commercial interest of the requestor" (5 U.S.C. 552 (a) (4)(A)); "Disclosure of the above requested information is in the public interest because disclosure would contribute significantly to public understanding of the difficulties encountered by USFS in managing public resources. Disclosure is in no way connected with any commercial interest of the requestors in that PEER is a nonprofit, nonpartisan public interest organization concerned with upholding the public trust through responsible management of our nation's resources and with supporting professional integrity within public land management and pollution control agencies. To that end, PEER is designated as a tax exempt organization under section 501 (c) (3) of the Internal Revenue code."



The Forest Service relies heavily upon the fee waiver factors which are very specific. Each request for a fee waiver is to be evaluated on a case-by-case basis. Therefore, we rely on your responses to each of the factors, each time a request is made for a fee waiver. Your response to the fee waiver factors should be customized to address the specific documents requested in this instance and should reflect how all of the specific information requested in this instance will benefit the general public. Therefore, it will be difficult for our office to qualify your organization for a fee waiver based on the generic information you have supplied in your request.

All requesters must specifically identify how the current information being requested meets all of the fee waiver criteria. Further, the fact that your organization has qualified for a fee waiver in the past for a similar request, or that they are a nonprofit organization does not demonstrate their eligibility for a fee waiver. As with disclosures made under the FOIA, it has been found that agencies analyzing fee waiver requests are not bound by previous administrative decisions.

The Department of Agriculture has published FOIA guidelines for agencies to follow in making fee waiver determinations. The guidelines, found at 7 CFR, Subtitle A, Part 1, Subpart A, Appendix A, Section 6(a)(1), list six factors to be taken into consideration when assessing fee waiver requests:

(1) The subject of the request, i.e., whether the subject of the requested records concerns "the operations or activities of the government";

(2) The informative value of the information to be disclosed, i.e., whether the disclosure is "likely to contribute" to an understanding of government operations or activities. (The requester bears the burden of identifying "with reasonable specificity" the public interest served.)

(3) The contribution to an understanding of the subject by the general public likely to result from disclosure, i.e., whether disclosure of the requested information will contribute to "public understanding". (Factor 3 concerns whether disclosure of the information will contribute to the public at large, and requires the requester to have the ability to disseminate the information to the general public. Requesters cannot satisfy the standard merely by representing that they will make the information available to others. Requesters have the burden of demonstrating with particularity that the information will be communicated to the public.)

(4) The significance of the contribution to public understanding, i.e., whether the disclosure is likely to contribute "significantly" to public understanding of government operations or activities. (The public benefit should be "identified with reasonable specificity".)

(5) The existence and magnitude of a commercial interest, i.e., whether the requester has a commercial interest that would be furthered by the requested disclosure; and if so,

(6) The primary interest in disclosure, i.e., whether the magnitude of the identified commercial interest of the requester is sufficiently large, in comparison with the public interest in disclosure, that disclosure is "primarily in the commercial interest of the requester." (Factor 6 requires an agency to balance the requester's commercial interest against the identified public interest in disclosure and determine which interest is "primary.")

In addition to supplying information addressing each of the above fee waiver factors, you might consider submitting copies of the articles of incorporation of your organization, the constitution and bylaws of the organization, and publications of your organization including, but not limited to, newsletters, membership brochures, and fundraising solicitations.

It will also be beneficial for you to demonstrate past instances where you or your organization used information provided by the Forest Service to significantly benefit the public at large. To do this you might consider providing samples including brochures, books, educational videos, newsletters, memoranda from public meetings you or your organization has conducted, educational presentations your organization has given, television and radio interviews, press releases, testimony before Congress, and newspaper articles.

Since any waiver or reduction in fees is an expenditure of public funds, please provide us with information responsive to the items listed above. We will not proceed with your request until a determination has been made on your request for a fee waiver or until we receive an indication of your willingness to pay the charges in connection with the request. The correspondence indicating the above should be emailed to me at wmprato@fs.fed.us or you may contact me at (505) 944-8131.

For more information concerning your FOIA request with the USDA Forest Service, please contact me at wmprato@fs.fed.us. Please include a copy of this letter and/or the FOIA control number, 2014-FS-WO-02076-F, assigned to your FOIA request.

Sincerely,

//signed//

WILLA PRATO

WO Government Information Specialist

Washington FOIA & Privacy Act Service Center