

EXHIBIT K  
Science Summary FOIA Appeal Decision



FOIA Appeal No. 2014-007  
IN REPLY REFER TO.

United States Department of the Interior

OFFICE OF THE SOLICITOR  
Washington, D.C. 20240

December 9, 2013



Kathleen Sgamma  
Western Energy Alliance  
410 17<sup>th</sup> Street, Suite 700  
Denver, CO 80202

Dear Ms. Sgamma:

This responds to the October 28, 2013, Freedom of Information Act (“FOIA”) appeal (“appeal”) that you filed with the Department of the Interior (“Department”), which was received on the same date and filed on behalf of Western Energy Alliance (“WEA”). The Department has assigned your appeal as **Appeal Number 2014-007** and it concerns the United States Geological Survey’s (“USGS”) response to WEA’s June 17, 2013, FOIA request, which sought four categories of documents generally related to a report entitled “Summary of Science, Activities, Programs, and Policies That Influence Rangeland Conservation of Greater Sage-Grouse...” (hereinafter referred to as “Team Report”).

A discussion of the specific issues you identify in the appeal and the Department’s determination on each one follows.

**ISSUE 1:** You challenge the sufficiency of the USGS’s response to Item 1 of the FOIA request, which sought:

The names and institutions of employment and/or affiliations (e.g., university, scientific organization, corporation, agency, etc.) of all persons contacted for the purposes of providing peer review of the Team Report.

In response to this item in the FOIA request, the USGS advised WEA that “[t]here were two reviewers of this report.” However, it provided the name, position title, and organization of only one. For the other reviewer, the USGS merely advised that he/she is an “Upland Game Staff Specialist” with the Nevada Department of Wildlife in Reno, Nevada.

In the appeal, you state that the USGS’s response to this item is deficient because “the second reviewer is referred to not by name, but by affiliation only...” You also challenge the response to this item because the USGS “did not state whether any additional reviewers were contacted, or their affiliation(s). If these are the only two reviewers contacted then the USGS needs to acknowledge this fact.”

**DECISION:** The Department concludes that the USGS’s response to this item is not responsive to what WEA requested. WEA specifically sought the names “of all persons *contacted*” to

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provide a peer review; not the names of the individuals who actually performed the peer review of the Team Report, as the USGS provided.

Since the USGS's response to Item 1 of the FOIA request does not address what WEA actually sought (i.e., identifying information regarding the individuals "contacted"), **by copy of this letter, the Department is remanding ISSUE 1 of the appeal to the USGS for it to:**

- **Respond anew to Item 2 of the FOIA request with documentation or information that reveals the "names and institutions of employment and/or affiliations...of all persons contacted for the purposes of providing peer review of the Team Report."**

The USGS's new response to Item 1 of the FOIA request will include the names and other requested identifying information of all of the persons "contacted," unless the USGS determines that it either does not have/cannot locate any responsive information or that such information is protected from disclosure by a FOIA exemption.

- Should the USGS determine that it does not have or cannot locate responsive information, its letter to the Appellant will contain all of the information the regulations require a bureau to include when it makes such a determination.<sup>1</sup>
- Should the USGS determine to invoke a FOIA exemption to withhold the names and/or other requested identifying information of the individuals contacted, its new response to the Appellant will contain all of the information that the Department's FOIA regulations ("regulations") require a bureau to include when it makes such a determination, e.g., "[a] reference to any FOIA exemption(s) applied" and the name...of the Office of the Solicitor attorney consulted..."<sup>2</sup>

**ISSUE 2:** You challenge the sufficiency of the USGS's response to Item 3 of the FOIA request, which sought:

The questions asked and/or issues presented to the Peer Reviewers with respect to the Team Report.

In response to this item of the FOIA request, the USGS advised that the "[r]eviewers are asked to provide a scientific peer review of the subject document. There were no specific issues or questions presented to the reviewers." You state that the USGS's answer "is not responsive to [WEA's] request because the USGS response did not include any information regarding questions asked and/or issues presented to reviewers. How were peer reviewers to know if they were to provide a peer review if they were not asked and given even a minor amount of direction? We require the text or copies of the actual request sent out to peer reviewers."

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<sup>1</sup> 43 C.F.R. § 2.24(b)(1), (2), & (5).

<sup>2</sup> 43 C.F.R. § 2.24(b)(1)-(5).

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**DECISION:** The Department concludes that the USGS's response to Item 3 of the FOIA request was incomplete. While the USGS noted that "[r]eviewers are asked to provide a scientific peer review of the subject document," it did not provide any documentation to WEA that reflects the USGS actually requesting the reviewers in this case to provide a scientific peer review of the Team Report. Minimally, documents (e-mail messages, letters, or memoranda) asking individuals to provide a peer review of the Team Report (if they exist) are responsive to Item 3 of the FOIA request and the USGS should have provided them to the requester or invoked a FOIA exemption to withhold them. If no such documentation exists, the regulations require the USGS to inform the requester of this fact.

To resolve the USGS's incomplete response to Item 3 of the FOIA request, **by copy of this letter, the Department is remanding ISSUE 2 of the appeal to the USGS for it to:**

- **Conduct a new search of the paper and electronic files (including e-mails) of its offices that are most likely to contain responsive documents.**
  - If the USGS locates documents that are responsive to Item 3 of the FOIA request, it will either release the requested documents to WEA or invoke a FOIA exemption as a basis to withhold them in full or in part.
    - Should the USGS determine to invoke a FOIA exemption to deny the Appellant access to any portion of any responsive documents that it may locate, its new letter to her will contain all of the information the regulations require a bureau to include when it makes such a determination, as noted above.
  - If the USGS determines that it does not have or cannot locate responsive documents, its letter to the Appellant will contain all of the information the regulations require a bureau to include when it makes such a determination, as noted above.

**ISSUE 3:** You question whether the USGS released to you all of the documents that are responsive to Item 4 of the FOIA request, which sought:

Any formal or informal report(s), paper(s), data compilation(s), communication(s), comment(s), red-line(s), summary(ies) or other document type related to the Peer Reviewers' review or impression of the Team Report.

In response to this item of the FOIA request, you state that the USGS released "a copy of a draft manuscript with tracked changes and comments in the margin from" the one reviewer whom it identified by name. However, you state that the USGS did not provide copies of the actual peer reviews of this document by any reviewer and note that "[n]o peer review/comment of any kind was provided from the Upland Game Staff Specialist..."

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**DECISION:** In light of the other deficiencies with the USGS's response to the FOIA request, the Department will also remand ISSUE 3 of the appeal to the USGS for reprocessing to ensure that it has adequately searched for, located, and made a determination on the releasability of all of the responsive documents for Item 4 of the FOIA request that may be in its possession. In processing this aspect of the remand, the USGS is directed to:

➤ **Conduct another search of its paper and electronic files (including e-mails) to ensure that the “draft manuscript” that it released is the only responsive document that it possesses for this item.**

- In performing this new search, the USGS will ensure that its search is designed to uncover any responsive documents that may exist for every aspect of Item 4, i.e., “[a]ny formal or informal”:

1) reports; 2) papers; 3) data compilations; 4) communications; 5) comments; red-lines [i.e., track-changes reviews of the Team Report by either reviewer]; 6) summary(ies); and 7) any other document type *related* to the Peer Reviewers' review *or* impression of the Team Report.

To assist the USGS in determining whether any documents in its possession that it may locate are responsive to Item 4, the Department offers the following examples: If the named reviewer e-mailed the USGS after she completed the review to say, for example, “here are my edits,” such a communication from that reviewer would be responsive to the aspect of Item 4 that seeks “communications” and “any other document type *related* to the Peer Reviewer's review.” Any edited document that the named reviewer attached to her e-mail message would minimally be responsive to aspects 1, 2, 4, and 5 of Item 4. If, for example, the unnamed reviewer e-mailed the USGS to say, “the report looks fine” or “I have no comments” (and included no attachment with the e-mail), the unnamed reviewer's e-mail is responsive to the aspect of Item 4 that seeks “communications” and “any other document type related to the Peer Reviewer's review,” as well as “any other document type related to the Peer Reviewers' ...impression of the Team Report.”

- If the USGS's new search uncovers additional responsive documents, it will either release the requested documents or invoke a FOIA exemption as a basis to withhold them in full or in part (ensuring that its letter includes all of the information discussed above that is required by the regulations).
- If the USGS's new search does not uncover any additional responsive documents, the letter that it sends to the Appellant in connection with this remand will advise her of this fact.

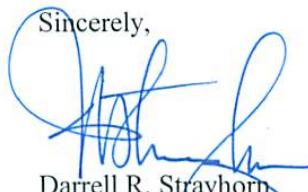
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**The USGS will correspond directly with the Appellant regarding this remand (with a copy of its letter to this Office) and it is directed to complete its processing of all of the remanded issues in the appeal within 20 workdays from the date of this decision, including releasing any documents (or portions of documents) that it locates that are not exempt from disclosure under the FOIA.**

This completes the Department's response to your appeal. If you have any questions regarding this matter, please call me at (202) 208-5339.

Sincerely,



Darrell R. Strayhorn  
FOIA & Privacy Act Appeals Officer  
Department of the Interior

cc: Christina Bartlett, Acting FOIA Officer, USGS (**FOR ACTION**)  
Cindy Cafaro, Departmental FOIA Officer

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**From:** [Kathleen Sgamma](#)  
**To:** [Kent Holsinger](#);  
**Subject:** FW: Decision on Your Freedom of Information Act Appeal (No. 2014-007)  
**Date:** Monday, December 09, 2013 11:15:32 AM

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**From:** FOIA. APPEALS [mailto:FOIA.APPEALS@sol.doi.gov]  
**Sent:** Monday, December 09, 2013 10:40 AM  
**To:** Kathleen Sgamma  
**Cc:** Bartlett, Christina M.; Lane, LaRima  
**Subject:** RE: Decision on Your Freedom of Information Act Appeal (No. 2014-007)  
**Importance:** High

Ms. Sgamma -- In the Department's decision on the subject Freedom of Information Act appeal, which it transmitted to you earlier, it mistakenly noted in its remand of ISSUE 1 of the appeal that the USGS is to "respond anew to Item 2 of the FOIA request..." (pg2). Since ISSUE 1 in the appeal raises a challenge relating to the USGS's response to Item 1 of the FOIA request, its processing of this remanded issue, will address Item 1.

My apologies for any confusion.

Darrell R. Strayhorn  
FOIA & Privacy Act Appeals Officer  
Department of the Interior

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**From:** FOIA. APPEALS  
**Sent:** Monday, December 09, 2013 12:15 PM  
**To:** [KSgamma@westernenergyalliance.org](mailto:KSgamma@westernenergyalliance.org)

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**Cc:** Bartlett, Christina M.; Lane, LaRima

**Subject:** Decision on Your Freedom of Information Act Appeal (No. 2014-007)

Ms. Sgamma:

Attached is a copy of the Department of the Interior's decision on Western Energy Alliance's October 28, 2013, Freedom of Information Act ("FOIA") appeal concerning its July 17, 2013, FOIA request to the United States Geological Survey. A hard copy of the decision will follow in the mail.

If you have any questions regarding this matter, please call me at (202) 208-5339.

Darrell R. Strayhorn  
FOIA & Privacy Act Appeals Officer  
Department of the Interior

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