



# Public Employees for Environmental Responsibility

962 Wayne Avenue, Suite 610 • Silver Spring, MD 20910

Phone: (202) 265-PEER • Fax: (202) 265-4192

Email: [info@peer.org](mailto:info@peer.org) • Web: <http://www.peer.org>

## NOTE NEW ADDRESS

Attn: FOIA/Privacy Act Appeals Office  
Department of the Interior  
Office of the Solicitor  
1849 C Street, N.W.  
MS-6556 MIB  
Washington, DC 20240

May 11, 2016

**RE: Freedom of Information Act Appeal for NPS FOIA Request – Theodore Roosevelt National Park.**

## VIA U.S. Mail & Fax

Dear Ms. Strayhorn:

On February 10, 2016, Public Employees for Environmental Responsibility (PEER) submitted a Freedom of Information Act request to the Theodore Roosevelt National Park (TRNP) regarding wireless telecommunications towers and antennae in TRNP.

[Attachment 1] Specifically, we requested the following:

1. The SF-299 written application submitted by Verizon to construct a new cell tower on land inside TRNP (as required by RM-53, Special Park Uses, Rights-of-Way, Wireless Telecommunication Facilities, Appendix 5, Exhibit 6, Page A5-48).

According to Page A5-49 of the section of RM-53 cited above, the SF-299 must contain all of the following:

“full description of the requested land or facility use in the park, including... equipment and antennas (including structures) to be located at each site.”

“maps showing the ‘before’ and ‘after’ service levels and signal strength for the proposed WTF site.”

“maps showing all other WTF sites and their coverage operated by the applicant up to a 15 mile radius (or other distance determined appropriate by the superintendent).”

“propagation maps from the applicant showing its proposed buildout of sites within a 15 mile radius of the proposed site within the next five years (or other distance or time frame determined appropriate by the superintendent).

a “copy of the FCC license authorizing the applicant to provide wireless telecommunications services for that area, along with a map showing the boundaries of the authorized service area and the relationship of that area to the park’s boundaries; and

a “realistic photo-simulation acceptable to the park depicting what the proposed WTF(s) and access, if applicable, would look like after installation.”

2. The Park’s written response to Verizon (either a yes, no, or maybe) following receipt of the SF-299 application (as required by RM-53,... Page A5-51).
3. The Park’s notice to “other Telecommunication companies and other interested parties” that TRNP had received an SF-299 application from Verizon to construct a cell tower inside the Park’s boundaries. (See RM-53,... Page A5-51).
4. The notice sent to the Park’s “list of potential interested parties” (if the Park has one), or the notice of receipt of Verizon’s SF-299 application that was sent to “a newspaper of general circulation in the affected area and/or in the nearest metropolitan area newspaper.” (See RM-53,... Page A5-51)
5. The cover letter and packet of information sent to “the Chief of Radio Frequency Management, FOTSC, Denver, to initiate a technical review” of the Verizon proposal. (See RM-53,... Page A5-51 and A5-52)
6. A copy of the Federal Register notice alerting the public that an Environmental Assessment (EA) had been issued by TRNP on Verizon’s proposal to construct a cell tower inside the boundaries of the park, and that a 30-day public comment period had been initiated. (See RM-53,... Page A5-53)
7. A copy of the notice published in “a newspaper of general circulation in the affected area and/or in the nearest metropolitan area newspaper” alerting the public that an EA had been issued by TRNP on Verizon’s proposal to construct a cell tower inside the boundaries of the park, and that a 30-day public comment period had been initiated. (See RM-53,... Page A5-53)

8. A copy of the Park's "Administrative Record" documenting all work related to Verizon's SF-299. (See RM-53, Page A5-50)

9. All documents in the possession of TRNP (including, but not limited to, e-mails; e-mail attachments; letters; meeting minutes; meeting notes; phone messages; memos; and others) concerning Verizon's proposal to build a cell tower inside the boundaries of TRNP.

10. All comments received by the Park during the scoping public comment period that ended on January 9, 2015. This request includes comments received on the Park's social media sites.

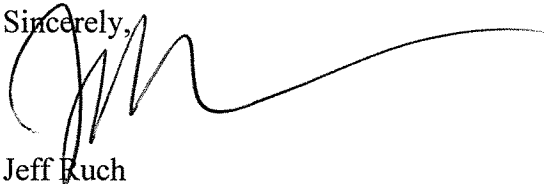
Note that these final two items were first requested of TRNP under FOIA by PEER more than a year prior on February 6, 2015. [Attachment 2] TRNP did not provide an official acknowledgement of either request after receipt and no reference numbers were supplied.

On March 4, 2016, TRNP provided a partial response to the request, indicating that it was specifically responding to the 2016 FOIA request sections (9) and (10) and indicating that it had received the 2015 FOIA request. [Attachment 3] At that time, TRNP stated that it intended to review the remaining requested materials and provide an Interim Response by April 8, 2016.

On April 29, 2016, we requested an update from TRNP as to the status of their response to the 2016 request sections (1)-(8). [Attachment 4] However, no further communications from TRNP have been received. At present, TRNP has failed to provide Verizon's written application for the construction of a cell tower, the Park's official response, and documentation related to several subsequent notice and review proceedings.

As these responsive materials have not been produced within the statutory deadlines of FOIA, nor is there an identified timeline for the production of these remaining responsive documents, these materials have been constructively denied to us. By this letter, PEER is therefore appealing this constructive denial.

Sincerely,

A handwritten signature in black ink, appearing to be "JR", with a long horizontal flourish extending to the right.

Jeff Ruch  
Executive Director



# Public Employees for Environmental Responsibility

962 Wayne Avenue, Suite 610 • Silver Spring, MD 20910

Phone: (202) 265-PEER • Fax: (202) 265-4192

Email: [info@peer.org](mailto:info@peer.org) • Web: <http://www.peer.org>

## NOTE NEW ADDRESS

Superintendent  
Theodore Roosevelt National Park  
P.O. Box 7  
Medora, ND 58645-0007

February 10, 2016

## RE: FOIA REQUEST

Dear Superintendent:

Pursuant to the Freedom of Information Act, 5 U.S.C. 552, as amended, Public Employees for Environmental Responsibility (PEER) requests information regarding wireless telecommunications towers and antennae in Theodore Roosevelt National Park (TRNP). Specifically, we request –

1. The SF-299 written application submitted by Verizon to construct a new cell tower on land inside TRNP (as required by RM-53, Special Park Uses, Rights-of-Way, Wireless Telecommunication Facilities, Appendix 5, Exhibit 6, Page A5-48).

According to Page A5-49 of the section of RM-53 cited above, the SF-299 must contain all of the following:

“full description of the requested land or facility use in the park, including... equipment and antennas (including structures) to be located at each site.”

“maps showing the ‘before’ and ‘after’ service levels and signal strength for the proposed WTF site.”

“maps showing all other WTF sites and their coverage operated by the applicant up to a 15 mile radius (or other distance determined appropriate by the superintendent).”

“propagation maps from the applicant showing its proposed buildout of sites within a 15 mile radius of the proposed site within the next five years (or other distance or time frame determined appropriate by the superintendent).”

a “copy of the FCC license authorizing the applicant to provide wireless telecommunications services for that area, along with a map showing the boundaries of the authorized service area and the relationship of that area to the park’s boundaries; and

a “realistic photo-simulation acceptable to the park depicting what the proposed WTF(s) and access, if applicable, would look like after installation.”

2. The Park’s written response to Verizon (either a yes, no, or maybe) following receipt of the SF-299 application (as required by RM-53,... Page A5-51).
3. The Park’s notice to “other Telecommunication companies and other interested parties” that TRNP had received an SF-299 application from Verizon to construct a cell tower inside the Park’s boundaries. (See RM-53,... Page A5-51).
4. The notice sent to the Park’s “list of potential interested parties” (if the Park has one), or the notice of receipt of Verizon’s SF-299 application that was sent to “a newspaper of general circulation in the affected area and/or in the nearest metropolitan area newspaper.” (See RM-53,... Page A5-51)
5. The cover letter and packet of information sent to “the Chief of Radio Frequency Management, FOTSC, Denver, to initiate a technical review” of the Verizon proposal. (See RM-53,... Page A5-51 and A5-52)
6. A copy of the Federal Register notice alerting the public that an Environmental Assessment (EA) had been issued by TRNP on Verizon’s proposal to construct a cell tower inside the boundaries of the park, and that a 30-day public comment period had been initiated. (See RM-53,... Page A5-53)
7. A copy of the notice published in “a newspaper of general circulation in the affected area and/or in the nearest metropolitan area newspaper” alerting the public that an EA had been issued by TRNP on Verizon’s proposal to construct a cell tower inside the boundaries of the park, and that a 30-day public comment period had been initiated. (See RM-53,... Page A5-53)
8. A copy of the Park’s "Administrative Record" documenting all work related to Verizon’s SF-299. (See RM-53, Page A5-50)
9. All documents in the possession of TRNP (including, but not limited to, e-mails; e-mail attachments; letters; meeting minutes; meeting notes; phone messages; memos; and others) concerning Verizon’s proposal to build a cell tower inside the boundaries of TRNP.
10. All comments received by the Park during the scoping public comment period that ended on January 9, 2015. This request includes comments received on the Park’s social media sites.

Note that these final two items were requested of TRNP under FOIA by PEER more than one year ago on February 6, 2015 (copy attached). TRNP has yet to respond to that request.

For any documents or portions of documents that you block release due to specific exemption(s) from the requirements of the Freedom of Information Act, please provide an index itemizing and describing the documents or portions of documents withheld. The index should, pursuant to the holding of Vaughn v. Rosen (484 F.2d 820 [D.C. Cir. 1973] cert. denied, 415 U.S. 977 [1974]), provide a detailed justification for claiming a particular exemption that explains why each such exemption applies to the document or portion of a document withheld.

PEER requests that all fees be waived because “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)):

*1. The records concern the operations or activities of the Government.*

This FOIA request is, by its terms, limited to identifiable activities of a specified unit of the national park system.

*2. The disclosure of the requested records is likely to contribute to public understanding of these operations or activities.*

The requested material concerns the building and erecting of man-made structures within the park. As the thrust of our FOIA request is to document which, if any, wireless communication towers will be built and antennae erected on national park land (and the process by which these wireless facilities are being approved), the requested documents are precisely on point of the subject matter of the request.

*3. The release of these requested records will contribute significantly to public understanding of the governmental activities.*

The information should shed direct light on the processes implemented by NPS in order to evaluate and make decisions regarding the protection of national park views, natural soundscapes and other park values relative to the building of wireless communications towers and the erecting of antennae within TRNP. Moreover, this request will reveal to what extent TRNP is adhering to NPS policies governing wireless facilities.

In addition, the wireless plans for TRNP affect visitor experience, options (and perhaps rules) for the thousands who visit the park each year and may set a precedent for other parks visited by millions more each year. The general public has a keen interest in environmental issues affecting national parks and also in how those issues are managed by the NPS.

PEER believes that disclosure of these documents will offer the general public important insights into how the environmental impacts of building towers and erecting antennae on national park land is being managed by the NPS.

PEER intends to provide the requested information to the general public through —

- Release to the news media;
- Posting on the PEER web page which draws between 1,000 and 10,000 viewers per day; and
- Publication in the PEER newsletter which has a circulation of approximately 20,000, including 1,500 environmental journalists.

Through these methods, PEER generates an average of 1.5 mainstream news articles per day. Moreover, PEER has repeatedly demonstrated the ability to generate nationwide news coverage concerning activities occurring within the NPS, including the specific topic of this FOIA request.

*4. Disclosure would not serve a commercial interest of the requestor.*

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.

If you have any questions about this FOIA request, please contact me at (202) 265-PEER. I look forward to receiving the agency's final response within 20 working days.

Sincerely,

Jeff Ruch  
Executive Director

Acting Superintendent  
Theodore Roosevelt National Park  
P.O. Box 7  
Medora, ND 58645-0007

February 6, 2015

**RE: FOIA REQUEST**

Dear Acting Superintendent:

Pursuant to the Freedom of Information Act, 5 U.S.C. 552, as amended, Public Employees for Environmental Responsibility (PEER) requests information regarding wireless telecommunications towers and antennae in Theodore Roosevelt National Park (TRNP). Specifically, we request –

1. All documents in the possession of the TRNP (including, but not limited to, e-mails; e-mail attachments; letters; meeting minutes; meeting notes; phone messages; memos; and others) concerning the December 2014 proposal to replace the North Unit's Radio Tower with a new telecommunications tower built by Verizon.
2. All comments received by the Park on the proposed Verizon telecommunications tower during the public comment period that ended on January 9, 2015. This request includes comments received on the Park's social media sites.

In a January 21, 2009 memo, President Barack Obama declared the following policy for the Executive Branch:

“The Freedom of Information Act should be administered with a clear presumption: In the face of doubt, openness prevails. The Government should not keep information confidential merely because public officials might be embarrassed by disclosure, because errors and failures might be revealed, or because of speculative or abstract fears. Nondisclosure should never be based on an effort to protect the personal interests of Government officials at the expense of those they are supposed to serve... All agencies should adopt a presumption in favor of disclosure, in order to renew their commitment to the principles embodied in FOIA, and to usher in a new era of open Government. The presumption of disclosure should be applied to all decisions involving FOIA.”

For any documents or portions of documents that you block release due to specific exemption(s) from the requirements of the Freedom of Information Act, please provide an index itemizing and describing the documents or portions of documents withheld. The index should, pursuant to the holding of Vaughn v. Rosen (484 F.2d 820 [D.C. Cir. 1973] cert. denied, 415 U.S. 977 [1974]), provide a detailed justification for claiming a particular exemption that explains why each such exemption applies to the document or portion of a document withheld.



PEER requests that all fees be waived because “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)):

*1. The records concern the operations or activities of the Government.*

This FOIA request is, by its terms, limited to identifiable activities of a specified unit of the national park system.

*2. The disclosure of the requested records is likely to contribute to public understanding of these operations or activities.*

The requested material concerns the building and erecting of man-made structures within the park. As the thrust of our FOIA request is to document which, if any, wireless communication towers will be built and antennae erected on national park land (and the process by which these wireless facilities are being approved), the requested documents are precisely on point of the subject matter of the request.

*3. The release of these requested records will contribute significantly to public understanding of the governmental activities.*

While it is difficult to warrant in advance of seeing it just how significant the information will be to the general public, the nature of the information should shed direct light on the processes implemented by NPS in order to evaluate and make decisions regarding the protection of national park views, natural soundscapes and other park values relative to the building of wireless communications towers and the erecting of antennae within TRNP.

In addition, the wireless plans for TRNP affect visitor experience, options (and perhaps rules) for the thousands who visit the park each year and may set a precedent for other parks visited by millions more each year. The general public has a keen interest in environmental issues affecting national parks and also in how those issues are managed by the NPS.

PEER believes that disclosure of these documents will offer the general public important insights into how the environmental impacts of building towers and erecting antennae on national park land is being managed by the NPS.

PEER intends to provide the requested information to the general public through —

- Release to the news media;
- Posting on the PEER web page which draws between 1,000 and 10,000 viewers per day; and
- Publication in the PEER newsletter which has a circulation of approximately 20,000, including 1,500 environmental journalists.

Through these methods, PEER generates an average of 1.5 mainstream news articles per day. Moreover, PEER has repeatedly demonstrated the ability to generate nationwide news coverage concerning activities occurring within the NPS, including the specific topic of this FOIA request.

*4. Disclosure would not serve a commercial interest of the requestor.*

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.

If you have any questions about this FOIA request, please contact me at (202) 265-PEER. I look forward to receiving the agency's final response within 20 working days.

Sincerely,

Jeff Ruch  
Executive Director



United States Department of the Interior

NATIONAL PARK SERVICE  
315 2<sup>nd</sup> Avenue  
P.O. Box 7  
Medora, North Dakota 58645-0007

March 4, 2016

9.C.(THRO)

Mr. Jeff Ruch  
Executive Director  
Public Employees for Environmental Responsibility  
962 Wayne Avenue, Suite 610  
Silver Spring, Maryland 20910

Reference: Theodore Roosevelt National Park

Subject: Response to Freedom of Information Act (FOIA) Request(s)

Dear Mr. Ruch:

This letter is in partial response to your Freedom of Information Act (FOIA) request dated February 10, 2016, in which you requested:

1. *The SF-299 written application submitted by Verizon to construct a new cell tower on land inside TRNP (as required by RM-53, Special Park Uses, Rights-of-way, Wireless Telecommunication Facilities, Appendix 5, Exhibit 6, Page A5-48).*
2. *The Park's written response to Verizon (either a yes, no, or maybe) following receipt of the SF-299 application (as required by RM-53,...Page A1-51).*
3. *The Park's notice to "other Telecommunication companies and other interested parties" that TRNP had received and SF-299 application from Verizon to construct a cell tower inside the Park's boundaries. (See RM-53,...Page A1-51).*
4. *The notice sent to the Park's "List of potential interested parties" (if the park has one), or the notice of receipt of receipt of Verizon's SF\_299 application that was sent to a "newspaper of general circulation in the affected area and/or in the nearest metropolitan area newspaper." (See RM-53,...Page A1-51).*
5. *The cover letter and packet of information sent to "the Chief of Radio Frequency Management, FOTSC, Denver, to initiate a technical review" of the Verizon proposal. (See RM-53,...Page A1-51).*
6. *A copy of the Federal Register notice alerting the public that an Environmental Assessment (EA) had been issued by TRNP on Verizon's proposal to construct a cell tower inside the boundaries of the park, and that a 30-day public comment period had been initiated. (See RM-53,...Page A1-51).*

7. *A copy of the notice published in a "newspaper of general circulation in the affected area and/or in the nearest metropolitan area newspaper" alerting the public that an EA had been issued by TRNP on Verizon's proposal to construct a cell tower inside the boundaries of the park, and that a 30-day public comment period had been initiated. (See RM-53,...Page A1-51).*

8. *A copy of the Park's "Administrative Record" documenting all work related to Verizon's SF-299. (See RM-53,...Page A1-51).*

9. *All documents in the possession of the TRNP (including but not limited to, e-mails; e-mail attachments; letters; meeting minutes; meeting notes; phone messages; memos; and others) concerning the December 2014 proposal to replace the North Unit's Radio Tower with a new telecommunications tower built by Verizon.*

10. *All comments received by the Park on the proposed Verizon telecommunications tower during the public comments period that ended on January 9, 2015. This request includes comments received on the Park's social media sites.*

This partial response addresses the following portion of your request:

9. *All documents in the possession of the TRNP (including but not limited to, e-mails; e-mail attachments; letters; meeting minutes; meeting notes; phone messages; memos; and others) concerning the December 2014 proposal to replace the North Unit's Radio Tower with a new telecommunications tower built by Verizon.*

10. *All comments received by the Park on the proposed Verizon telecommunications tower during the public comments period that ended on January 9, 2015. This request includes comments received on the Park's social media sites.*

This partial request also addresses your FOIA request to the park dated February 6<sup>th</sup>, 2015. Specifically the following:

1. *All documents in the possession of the TRNP (including but not limited to, e-mails; e-mail attachments; letters; meeting minutes; meeting notes; phone messages; memos; and others) concerning the December 2014 proposal to replace the North Unit's Radio Tower with a new telecommunications tower built by Verizon.*

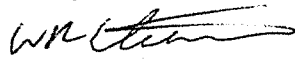
2. *All comments received by the Park on the proposed Verizon telecommunications tower during the public comments period that ended on January 9, 2015. This request includes comments received on the Park's social media sites.*

We are releasing available e-mail, reports, reference materials, meeting notes, newspaper articles, press releases, and other documents available to us at this time. Note that there were just three commenters on the proposal during the public scoping phase (PEER was one) and two commenters on the EA public review phase (PEER was one), and all of these comments have been included in this response.

We are continuing to review the remaining materials in your request dated February 10 2016 (items 1-8). We expect to have another Interim Response to you by April 8, 2016. We will provide you with your full appeal rights in our final response.

Please do not hesitate to contact me with any further questions or concerns. I can be reached at the address above or by phone at 701-623-4466.

Sincerely,

  
Wendy Ross  
Superintendent  
Theodore Roosevelt National Park

Attachments

**Katelin Shugart-Schmidt**

---

**From:** Jeff Ruch  
**Sent:** Friday, April 29, 2016 12:08 PM  
**To:** 'wendy\_ross@nps.gov'  
**Cc:** 'bill\_whitworth@nps.gov'  
**Subject:** Pending PEER FOIA request on cell towers

Dear Superintendent Ross:

Thank you very much for your partial response to our Freedom of Information Act request. That response indicated that we could expect production from your park by April 6 for the following records:

1. The SF-299 written application submitted by Verizon to construct a new cell tower on land inside TRNP (as required by RM-53, Special Park Uses, Rights-of-Way, Wireless Telecommunication Facilities, Appendix 5, Exhibit 6, Page A5-48).
2. The Park's written response to Verizon (either a yes, no, or maybe) following receipt of the SF-299 application (as required by RM-53,... Page A5-51).
3. The Park's notice to "other Telecommunication companies and other interested parties" that TRNP had received an SF-299 application from Verizon to construct a cell tower inside the Park's boundaries. (Per RM-53,... Page A5-51).
4. The notice sent to the Park's "list of potential interested parties" (if the Park has one), or the notice of receipt of Verizon's SF-299 application that was sent to "a newspaper of general circulation in the affected area and/or in the nearest metropolitan area newspaper." (Per RM-53,... Page A5-51)
5. The cover letter and packet of information sent to "the Chief of Radio Frequency Management, FOTSC, Denver, to initiate a technical review" of the Verizon proposal. (Per RM-53,... Page A5-51 and A5-52)
6. A copy of the Federal Register notice alerting the public that an Environmental Assessment (EA) had been issued by TRNP on Verizon's proposal to construct a cell tower inside the boundaries of the park, and that a 30-day public comment period had been initiated. (Per RM-53,... Page A5-53)
7. A copy of the notice published in "a newspaper of general circulation in the affected area and/or in the nearest metropolitan area newspaper" alerting the public that an EA had been issued by TRNP on Verizon's proposal to construct a cell tower inside the

boundaries of the park, and that a 30-day public comment period had been initiated. (Per RM-53,... Page A5-53)

8. A copy of the Park's "Administrative Record" documenting all work related to Verizon's SF-299. (Per RM-53, Page A5-50)

The promised production date has passed and I am writing to ascertain the status of this request. Please advise. Thank you, again.

Jeff Ruch

Executive Director

Public Employees for Environmental Responsibility (PEER)

962 Wayne Avenue; Suite 610

Silver Spring, MD 20910

Tel: (202) 265-7337; Fax: (202) 265-4192

Website: [www.peer.org](http://www.peer.org)