





HIGH  
SIERRA  
HIKERS  
ASSOCIATION

PO Box 8920, South Lake Tahoe, CA 96158

March 31, 2006

Freedom of Information Act Appeals Officer  
U.S. Department of the Interior  
MS-7456, MIB  
1849 C Street NW  
Washington, D.C. 20240

SUBJECT: FREEDOM OF INFORMATION ACT APPEAL

Dear Freedom of Information Act Officer:

This is an appeal under the Freedom of Information Act (FOIA). This letter is to appeal, pursuant to 43 CFR Section 2.28, the response of the National Park Service, Pacific West Region (the "Regional Office"), to our March 23, 2005, FOIA request.

On September 30, 2005, we appealed the decision of the Regional Office to deny a fee waiver that we requested under the FOIA. That appeal (Appeal Number 2006-002) was resolved by your office on November 1, 2005. We very much appreciate your time in resolving that appeal, and we regret having to file another appeal at this time.

On February 14, 2006, we filed a second appeal, requesting your review of the Regional Office's January 5, 2006 partial response to our FOIA request. That appeal (Appeal Number 2006-088) remains unresolved at this date. (We did receive your February 15 letter acknowledging receipt of our second appeal, but have not, to date, received your decision on that second appeal.)

Subsequent to filing our second appeal, we received a "final response" from the Regional Office. The Regional Office's "final response" is dated February 23, 2006 (copy enclosed); it was postmarked March 3, 2006, and received by us on March 6, 2006. This letter is therefore our third appeal, and hereby appeals the Regional Office's so-called "final response" dated February 23, 2006.

**Issue 1: The Regional Office did not respond in the time required by law.**

Your appeal decision dated November 1, 2005, instructed the Regional Office to respond to our FOIA request within twenty (20) workdays of your letter. However, we did not hear anything

from the Regional Office until more than two months later. The law requires a written determination from the Regional Office within 20 workdays as to whether or not it will comply with a FOIA request. *See 5 U.S.C. Section 552(a)(6)(A)(i)*. On January 9, 2006, we received a brief letter from the Regional Office (the "January 5 Response") (see Appeal Number 2006-088) along with a small portion of the documents we requested. On February 23, 2006, we received another brief letter from the Regional Office (the "February 23 Response") (copy enclosed) claiming to be the Regional Office's "final response," along with a small portion of the documents we requested. It has now been more than a year (March 23, 2005) since we first requested certain records, and the Regional Office has failed to comply with statutory and regulatory time lines at every step in this process.

**Issue 2: The Regional Office's response does not provide the determination required by statute and regulation.**

The Regional Office's February 23 Response does not comply with the law because it claims to constitute a "final response" even though the Regional Office has never provided a written determination stating whether (i) the identified documents constitute all of the responsive documents in the Regional Office's files, or (ii) the Regional Office intends to withhold documents or records described in each category of our March 23, 2005 request. Because the Regional Office's response does not allow us to determine whether, in fact, the Regional Office intends to comply with our March 23, 2005 request, its response does not comply with the applicable law. *See 5 U.S.C. Section 552(a)(6)(A)(i) and 43 CFR Section 2.31(b)(6)*.

**Issue 3: The materials provided by the Regional Office are not fully responsive to our request, items 1-4.**

The materials that the Regional Office produced in response to our FOIA request constitute only a small portion of the records described by our request. Although our items #2 through #4 seek records of communications between the NPS and commercial packstock enterprises, private horsemen's groups, and elected officials, from the time that SEKI's GMP planning process began until the date of our FOIA request, the Regional Office provided only the public comments on the draft General Management Plan (DGMP) for Sequoia and Kings Canyon National Parks (SEKI) that were received by the NPS during the formal comment period on the DGMP (from May through October of 2004). While these public comments are described by item #1 of our FOIA request, they do not comply with items #2 through #4 of our request. Our FOIA request (items #2 through #4) plainly covers documents generated and communications that occurred during the entire time period of SEKI's GMP planning process, and is not limited to the narrow period constituting the formal comment period on the DGMP.

The Regional Office stated in a letter to the High Sierra Hikers Association that: *"The park has worked on a draft plan for about 10 years."* (That letter is dated Aug 23, 2005, and a copy is included in the file for Appeal Number 2006-002.) Clearly, the Regional Office possesses records of communications with commercial packstock enterprises, private horsemen's groups, and/or elected officials that regard the GMP planning process and that occurred during the many years both before and after the DGMP comment period of May through October of 2004.

These requested records must be provided, or the reasons for withholding them must be identified.

**Issue 4: The materials provided by the Regional Office are not fully responsive to our request, item 5.**

Item number 5 of our March 23, 2005 FOIA request seeks (in part):

5. all internal NPS communications regarding the DEIS and development of the DGMP that were created prior to the date of this letter.

The Regional Office's February 23 Response provided records only from the email files of two employees. This is not sufficient to fully respond to our request. Our request includes all internal NPS communications regarding the Draft Environmental Impact Statement (DEIS) and development of the DGMP, not simply the email records of two employees. Any other records (in addition to email records) of those two employees also must be provided, or the reasons for withholding them must be identified. Further, records generated or possessed by other NPS employees (in addition to the two employees mentioned) must be provided, or the reasons for withholding them must be identified.

**Issue 5: The Regional Office has not provided records that are reasonably segregable, item 5.**

The Regional Office's February 23 Response states that approximately 5,000 pages of records were located responsive to our item number 5. Of those 5,000 pages, only about 200 pages were provided to us, meaning that approximately 4,800 pages were withheld. The February 23 Response claims broadly that all 4,800 withheld pages are withheld under exemption 5 of the FOIA.

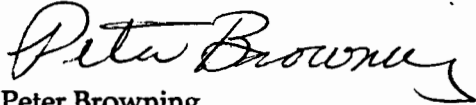
The FOIA requires that any reasonably segregable portion of a record must be provided after deletion of the portions that are exempt. *See 5 U.S.C. Section 552(b)*. It stretches credibility to the breaking point for the Regional Office to claim that there is no reasonably segregable portion of any of those 4,800 pages that would be responsive to our request but not fall under exemption 5 of the FOIA.

### **Summary and Conclusion**

The Regional Office has not responded to our March 23, 2005 FOIA request within the time prescribed by law. Not one of its several "responses" to date has provided the written determination required by the Freedom of Information Act. Nor has the Regional Office produced the materials sought by our request. The Regional Office repeatedly ignores and/or misunderstands our clearly written request, and in doing so it has improperly limited its search and production of documents. As a result, we respectfully request that the Appeals Officer take all necessary action(s) to remedy the deficiencies in the Regional Office's January 5 and February 23 responses identified in this appeal.

We appreciate very much your time, and we thank you for your consideration. If you have any questions regarding this appeal, please contact me at the letterhead address or via telephone at (925) 283-3184.

Sincerely yours,



Peter Browning  
President, High Sierra Hikers Association

Enclosure: Feb 23, 2006 letter from NPS





# United States Department of the Interior

OFFICE OF THE SOLICITOR  
Washington, D.C. 20240



IN REPLY REFER TO:  
FOIA Appeal No. 2006-088

APR 18 2006

Peter Browning  
High Sierra Hikers Association  
P.O. Box 8920  
South Lake Tahoe, CA 96158

Dear Mr. Browning:

This concerns the February 14, 2006, Freedom of Information Act ("FOIA") appeal ("appeal") (No. 2006-088) that you filed with the Department of the Interior ("Department"). Your appeal concerns the NPS's January 5, 2006, "interim response" to your March 23, 2005, FOIA request, which sought five categories of documents pertaining to the Draft General Management Plan for Sequoia & Kings Canyon National Parks. The NPS's January 5, 2006, interim response addressed items 1 through 4 of the FOIA request. The NPS also advised you in this letter that it was reviewing the e-mail files of two of its employees to locate documents that are responsive to item 5 of the FOIA request and that it anticipated completing this review by February 15, 2006. Your appeal first challenges the NPS's failure to fully respond to your March 23, 2005, FOIA request within the time limits set in the FOIA. *See 5 U.S.C. § 552(a)(6)(A)(i)* (requiring an agency to determine within 20 workdays after the receipt of a FOIA request whether it will comply with such a request (i.e., grant or deny the request (or any portion thereof))). You next challenge in the appeal the completeness of the NPS's January 5, 2006, interim response to items 2 through 4 of the FOIA request – you state the NPS only provided you with a portion of the materials that are responsive to these items. Finally, you question in your appeal whether the NPS will provide you with all of its disclosable documents that are responsive to item 5 of your FOIA request, as you imply that the e-mail files the NPS advised you that it was reviewing do not contain all of the documents that are responsive to this item of the FOIA request.

With respect to the portion of your appeal related to the NPS's failure to fully respond to your FOIA request within the time limits set in the FOIA, the NPS issued its final response to you on February 23, 2006 (a copy of which is attached), which resolves this issue in the appeal.

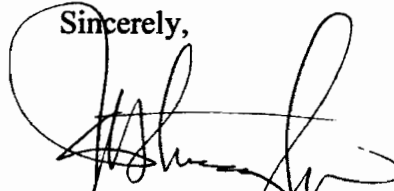
As for your challenges to the portions of the NPS's January 5, 2006, interim response that address items 2 through 5 of the FOIA request, the Department concludes that you prematurely raised these issues in connection with this appeal. When you filed this appeal, the NPS had not made its final decision on what documents it would release in response to your FOIA request. Therefore, logically, its January 5, 2006, interim response was not complete. The appropriate time to raise any challenges in a FOIA appeal concerning the completeness of the NPS's response to items 2 through 5 of the FOIA request would be after the NPS issues its final response to the matter, as the NPS's final response to the FOIA request could resolve all of the

issues you raised on these items. Therefore, the only issue that is properly before the Department in this appeal is the NPS's failure to fully respond to your FOIA request within the time limits set in the FOIA, which has been resolved. Accordingly, the Department will not take any action on your challenges in this appeal related to the completeness of the NPS's January 5, 2006, interim response to items 2 through 5 of the FOIA request.

The Department notes that the NPS's February 23, 2006, final response to the FOIA request advised you of your right to file an appeal of its determination, which you did by letter dated March 31, 2006. The new appeal, which the Department has assigned as Appeal Number 2006-118, challenges the completeness of the NPS's final response to items 2 through 5 of the FOIA request. The Department will address the issues you raise in this new appeal in separate correspondence to you.

This completes the Department's response to Appeal Number 2006-088. If you have any questions, please call LaRima Lane at (202) 208-5339.

Sincerely,

A handwritten signature in black ink, appearing to read 'D. Strayhorn', written over a horizontal line.

Darrell R. Strayhorn  
FOIA Appeals Officer  
Department of the Interior

cc: Diane Cooke, FOIA Officer, NPS  
Alexandra Mallus, Departmental FOIA Officer



Bundock  
Jarvis

A7221(PWR-C)

FEB 23 2006

Mr. Peter Browning  
High Sierra Hikers Association  
PO Box 8920  
South Lake Tahoe, CA 96158

Dear Mr. Browning:

This is a final response concerning your March 23, 2005, Freedom of Information Act (FOIA) request for records at Sequoia National Park and concerning its draft General Management Plan (GMP).

You sought:

1. "all comments received by the NPS in response to the Draft Environmental Impact Statement (DEIS) for the Sequoia & Kings Canyon (SEKI) Draft General Management Plan...
2. "any and all communications regarding the SEKI GMP and GMP planning process received by the NPS from commercial packstock enterprises that operate within SEKI...
3. "any and all communications regarding the SEKI GMP and GMP planning process received by the NPS from Backcountry Horsemen of California, and from the Backcountry Horsemen of America, and any and all NPS responses to those communications....
4. "any and all communications regarding the SEKI GMP and GMP planning process received by the NPS from elected officials, and any and all NPS responses to those communications....
5. "all internal NPS communications regarding the DEIS and development of the DGMP that were created prior to the date of this letter."

You should have received copies of all public comments to the draft GMP and our January 5, 2006, transmittal letter. These comments are responsive to items 1 - 4.

This letter addresses item 5. Email records of planning team leaders Dave Graber and Susan Spain have been reviewed. We have printed these records which total about 5,000 pages. Our original estimate to you was 8,500 pages. These records are transmittals of draft statements, opinions, and conversations about the preparation of the draft General Management Plan and

between these two individuals. Park staff occasionally is included in the transmittals. These records are withheld under exemption 5 of the FOIA (5 USC 552(b)(5)).

Exemption 5 is designed to protect those inter-agency and intra-agency memorandums or letters which would not be available by law to a party in litigation with the agency. The purpose of this exemption is to encourage open and frank discussions on matters of policy between subordinates and superiors, to protect against premature disclosure of proposed policies before they are finally adopted, and to protect against public confusion that might result from disclosure of reasons and rationales that were not in fact ultimately the grounds for an agency's action.

Some of these emails contain news articles, contracts, and communications with individuals outside of the National Park Service. These records are enclosed, redacted of personal addresses, in accordance with exemption 6 of the FOIA.

The Department maintains that an individual has a personal privacy interest in this information. We do not perceive, nor have you enunciated any public interest that would be served in disclosing this data which would outweigh the privacy interest of the subject individuals. Therefore, sound grounds exist for withholding the information pursuant to exemption 6 of the FOIA (5 USC 552 (b)(6)) which permits an agency to withhold "personal and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy."

This completes the search and evaluation of the records responsive to your FOIA request. In addition to myself, FOIA Officer Holly Bundock, who can be reached at 510-817-1320, and Assistant Field Solicitor Paula Lee, participated in this decision.

You have the right to appeal this decision by writing to the Freedom of Information Act Appeals Officer, U.S. Department of the Interior, 1849 C Street NW, MS-7456, MIB, Washington, D.C. 20240. Your appeal must be in writing and received no later than 30 workdays after the date of this letter or 30 workdays after receipt of any records that are provided to you. A copy of your original request and this letter should accompany the appeal as well as a brief statement of the reasons why you believe this initial decision to be in error. The appeal should be marked "Freedom of Information Appeal" both on the envelope and the face of the letter.

Sincerely,

**JONATHAN B. JARVIS**

Jonathan B. Jarvis  
Regional Director, Pacific West Region

Enclosures

bcc: Supt., SEKI

FNP:HBundock:rh:2/23/2006:510-817-1320:c:\doc\foi\browning2





United States Department of the Interior

OFFICE OF THE SOLICITOR  
Washington, D.C. 20240



IN REPLY REFER TO:  
FOIA Appeal No. 2006-2006-118

APR 20 2006

Peter Browning  
High Sierra Hikers Association  
PO Box 8920  
South Lake Tahoe, CA 96158

Dear Mr. Browning:

This concerns your March 31, 2006, Freedom of Information Act ("FOIA") appeal ("appeal") to the Department of the Interior ("Department"), which was received on April 7, 2006. The Department has assigned your appeal as **Appeal Number 2006-118**. Please cite this number in any future correspondence you send to the Department regarding this appeal.

The FOIA requires an agency to make a determination on an appeal within 20 workdays after the receipt of such appeal. *5 U.S.C. § 552(a)(6)(A)(ii)*. The Department will make every effort to reach a decision on your appeal within this time limit.

If you have any questions regarding your appeal, you may contact Selena Robinson at (202) 208-5339.

Sincerely,

Darrell R. Strayhorn  
FOIA Appeals Officer  
Department of the Interior





HIGH  
SIERRA  
HIKERS  
ASSOCIATION

PO Box 8920, South Lake Tahoe, CA 96158

May 23, 2007

Darrell R. Strayhorn  
FOIA Appeals Officer  
U.S. Department of the Interior  
MS-6556, MIB  
1849 C Street NW  
Washington, DC 20240

Dear Freedom of Information Act Officer:

This letter is in reference to **Appeal Number 2006-118**.

On March 23, 2005 the High Sierra Hikers Association (HSHA) sent a FOIA request to Sequoia and Kings Canyon National Parks. Included with this request was a Justification for Fee Waiver. The National Park Service, Pacific West Region ("Regional Office") denied the fee waiver. On September 30, 2005 we appealed that decision. That appeal (**Appeal Number 2006-002**) was resolved by your office on November 1, 2005, and we appreciate your response to that appeal.

On February 14, 2006 we filed a second appeal, requesting your review of the Regional Office's January 5, 2006 partial, highly unsatisfactory response to our FOIA request. (See our letter to your office dated March 31, 2006.)

We did not hear anything from your office for **another eleven months**. On February 26 of this year I received a telephone message from Ms. LaRima Lane in your office, wanting to know if we were still interested in pursuing our appeal. I returned her call on February 27, and assured her in no uncertain terms that the HSHA did indeed wish to pursue the appeal, and that we were appalled that we had been ignored and denied for such an incredible length of time. Ms. Lane said that our appeal would be dealt with as soon as possible, and that we would hear from your office in no more than twenty days. Nearly another two months have gone by, and we have heard nothing.

It is unconscionable that we should have been subjected to such treatment. The failure of the Regional Office of the National Park Service and of your office to respond in an appropriate and timely manner to our FOIA request violates the law governing such requests. (For details, I refer you again to our letter of March 31, 2006.)

We submitted our initial FOIA request **more than two years ago**. That request has not been satisfied, nor has it been responded to in the manner prescribed by law. We desire an immediate response to this letter, and a timely resolution of our FOIA request.

If you have any questions regarding this letter, please contact me at the letterhead address, or by telephone at (925) 283-3184.

Sincerely yours,

A handwritten signature in cursive script that reads "Peter Browning".

Peter Browning  
President, High Sierra Hikers Association





MORRISON |  ERSTER

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SHANGHAI, HONG KONG,  
SINGAPORE, BRUSSELS

December 4, 2007

Writer's Direct Contact  
415.268.6298  
JBollock@mofocom

Via U.S. Mail

Darrell R. Strayhorn  
FOIA Appeals Officer  
U.S. Department of the Interior  
MS-6556, MIB  
1849 C Street, NW  
Washington, D.C. 20240

Re: **FOIA Appeal Number 2006-118**

Dear Mr. Strayhorn:

This letter is in reference to the Freedom of Information Act (FOIA) request filed by the High Sierra Hikers Association (HSHA) on March 23, 2005.

In its FOIA request, the HSHA sought five categories of documents from the National Park Service (NPS) regarding the Sequoia & Kings Canyon National Parks' General Management Plan. After the HSHA's first appeal was resolved in its favor by your office, the NPS issued a partial response to the request on January 5, 2006. The HSHA filed a second appeal of that partial response on February 14, 2006. Subsequently, the NPS issued a "final response" on February 23, 2006 (postmarked March 3). The NPS's "final response" was incomplete and inadequate, which the HSHA explained in its third appeal, filed on March 31, 2006. In your letter to Mr. Peter Browning of the HSHA, dated April 18, 2006, you acknowledged receipt of the HSHA's third appeal, assigned an appeal number (2006-118), and stated that the third appeal would be addressed in separate correspondence. Nineteen months have passed, however, and the HSHA has received no response from your office.

The only communication received by the HSHA regarding its third appeal was a telephone call from Ms. LaRima Lane of your office on February 26, 2007, inquiring whether the HSHA still wished to pursue its appeal. On February 27, 2007, Mr. Browning spoke to Ms. Lane and informed her that the HSHA is still pursuing its third appeal. During that conversation, Ms. Lane assured Mr. Browning that the appeal would be addressed within 20 days. No response was received. On May 23, 2007, Mr. Browning sent a letter to you summarizing these events and requesting a response. Yet six months later, your office still has not responded.

Darrell R. Strayhorn  
U.S. Department of the Interior  
December 4, 2007  
Page Two

As you know, pursuant to FOIA, the Department of the Interior's FOIA regulations, and its internal FOIA policies, the Department has 20 workdays to respond to an appeal or inform the requester that an extension is necessary. *See* 5 U.S.C. § 552(a)(6)(A); 43 C.F.R. § 2.32. If the Department requires an extension, it must notify the requester, state the reason for the extension, and also inform the requester of the anticipated date of the response. *See* 5 U.S.C. § 552(a)(6)(B); 43 C.F.R. § 2.32; U.S. Department of the Interior, Freedom of Information Act Handbook ¶ 3.10 (2004), *available at* [http://www.doi.gov/foia/handbook\\_2004.pdf](http://www.doi.gov/foia/handbook_2004.pdf).

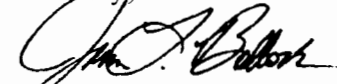
The regulations and internal policies also require that the Department "make every effort to keep requesters apprised of the status of their requests." Freedom of Information Act Handbook ¶ 3.10. When the Department is unable to issue a decision on an appeal within 20 workdays, the FOIA Appeals Officer must send a letter to the appellant advising of the status of the FOIA appeal and advising the appellant of its right to treat the delay as a denial and seek judicial review by filing a lawsuit in a district court. *See id.* at ¶ 6.12; 43 C.F.R. § 2.32(c). The HSHA has received no such correspondence.

In sum, the Department has failed to comply with the requirements of FOIA, its FOIA regulations, and its internal FOIA policies.

Before pursuing a judicial remedy, and without relinquishing any other legal or factual contentions it may have now or in the future, the HSHA would like to provide the Department with one more opportunity to resolve this issue informally. To that end, please issue a determination resolving the HSHA's third appeal on or before **December 21, 2007**, and instruct the NPS to provide all requested materials within 20 workdays from the date of your determination. Additionally, the NPS should be instructed not to delete or destroy any records related to the General Management Plan. If this appeal has not been resolved by that date, the HSHA will have no choice but to seek judicial intervention.

I look forward to your response. If you have any questions or comments, please contact me at any time.

Sincerely,



Jamon Bollock

Enclosures

Copies: LaRima Lane, U.S. Department of the Interior  
Diane Cooke, FOIA Officer, National Park Service  
Alexandra Mallus, FOIA Officer, Department of the Interior

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Darrell R. Strayhorn  
U.S. Department of the Interior  
December 4, 2007  
Page Three

LaRima Lane  
FOIA Appeals Office  
U.S. Department of the Interior  
1849 C Street, NW  
Washington, D.C. 20240

Alexandra Mallus  
FOIA Officer  
U.S. Department of the Interior  
MS-5312, MIB  
1849 C Street, NW  
Washington, D.C. 20240

Diane Cooke  
(Org Code 2550)  
Office of the Chief Information Officer  
National Park Service  
8th Floor  
1201 Eye Street, NW  
Washington, DC 20005

