

**Exhibit 5**

**From:** [Mizerak, John](mailto:Mizerak, John)  
**To:** [Mizerak, John](mailto:Mizerak, John)  
**Subject:** FW: USGS FOIA 2018-00027 – Final Response, and Notification of Referral to the Office of the Secretary FOIA Office  
**Date:** Monday, December 18, 2017 9:33:41 AM

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**From:** [jcearley@usgs.gov](mailto:jcearley@usgs.gov) [<mailto:jcearley@usgs.gov>] **On Behalf Of** Freedom of Information Act, GS-D-EI\_

**Sent:** Thursday, December 14, 2017 6:15 PM

**To:** Guzy, Gary <[GGuzy@cov.com](mailto:GGuzy@cov.com)>

**Cc:** GS-D-EI\_ Freedom of Information Act <[foia@usgs.gov](mailto:foia@usgs.gov)>

**Subject:** USGS FOIA 2018-00027 – Final Response, and Notification of Referral to the Office of the Secretary FOIA Office

Dear Mr. Guzy,

On November 7, 2017, the USGS Freedom of Information Act (FOIA) office received your FOIA request dated November 3, 2017, and assigned it tracking number **USGS-2018-00027**. You requested the following information:

- 1. All draft and final documents, including but not limited to all policies, directives, training materials, other guidelines, memoranda, meeting notes, agendas, notes of telephone conversations, and electronic media, relating to Executive Order 13972 on the Review of Designations under the Antiquities Act, issued by President Donald J. Trump on April 26, 2017, and the review conducted thereunder by the Department of the Interior, as it relates to Grand Staircase-Escalante National Monument ("Grand Staircase" or "the Monument").*
- 2. All documents since January 20, 2017, memorializing travel details and schedules for Department of the Interior and Bureau of Land Management officials to the State of Utah for purposes relating to the review of Grand Staircase-Escalante National Monument pursuant to Executive Order 13972.*
- 3. All documents memorializing the occurrence of, and/or the substance of, meetings scheduled since January 20, 2017, between any Department of the Interior official and any Utah elected or appointed official, including meetings that were requested but were denied, relating to Grand Staircase-Escalante National Monument or immediately adjoining state or federal public lands.*
- 4. All expenditure reports of travel, since January 20, 2017, by the Department of the Interior or Bureau of Land Management officials to the State of Utah, relating to Grand Staircase-Escalante National Monument or immediately adjoining state or federal public lands.*

5. *All documents memorializing the occurrence and/or the substance of meetings scheduled since January 20, 2017, between Bureau of Land Management officials, including but not limited to officials in the BLM Utah State Office and in any BLM Field Office in Utah, and any Utah elected or appointed official, including meetings that were requested but were denied.*

6. *All documents memorializing correspondences and communications, whether written, electronic or oral, among Department of the Interior officials, relating to changes or potential changes to the designation, boundaries, design, or management plan for Grand Staircase-Escalante National Monument or immediately adjoining state and federal public lands, since January 20, 2017.*

7. *All documents memorializing correspondences and communications, whether written, electronic or oral, among Bureau of Land Management officials, including but not limited to officials in the BLM Utah State Office and in any BLM Field Office in Utah, relating to changes or potential changes to the designation, boundaries, design, or management plan for Grand Staircase Escalante National Monument or immediately adjoining state and federal public lands, since January 20, 2017.*

8. *All documents memorializing correspondences and communications, whether written, electronic or oral, between Department of the Interior officials and Bureau of Land Management officials, including but not limited to officials in the BLM Utah State Office and in any BLM Field Office in Utah, since January 20, 2017, relating to changes or potential changes to the designation, boundaries, design, or management plan for Grand Staircase-Escalante National Monument or immediately adjoining state and federal public lands, since January 20, 2017.*

9. *All documents memorializing correspondences and communications, whether written, electronic or oral, between any Department of the Interior official and any Utah elected or appointed official, relating to changes or potential changes to the designation, boundaries, design, or management plan for Grand Staircase- Escalante National Monument or immediately adjoining state and federal public lands, since January 20, 2017.*

10. *All documents memorializing correspondences and communications, whether written, electronic or oral, between any Bureau of Land Management official, including but not limited to officials in the BLM Utah State Office and in any BLM Field Office in Utah, and any Utah elected or appointed official, relating to changes or potential changes to the designation, boundaries, design, or management plan for Grand Staircase-Escalante National Monument or immediately adjoining state and federal public lands, since January 20, 2017.*

11. *All documents memorializing correspondences and communications, whether written, electronic or oral, between any Department of the Interior official and the Monument Manager for Grand Staircase-Escalante National Monument, relating to changes or potential changes to the designation, boundaries, design, or management plan for Grand Staircase-Escalante National Monument or immediately adjoining state and federal public lands, since January 20, 2017.*

12. *All documents memorializing correspondences and communications, whether written, electronic or oral, between any Bureau of Land Management official, including but not limited to officials in the BLM Utah State Office and in any BLM Field Office in Utah, and the Monument Manager for Grand Staircase Escalante National Monument, relating to changes or potential changes to the designation, boundaries, design, or management plan for Grand Staircase Escalante National Monument or immediately adjoining state and federal public lands, since January 20, 2017.*

13. *All documents memorializing correspondences and communications, whether written, electronic or oral, between Department of the Interior officials and officials in the White House, relating to changes or potential changes to the designation, boundaries, design, or management plan for Grand Staircase*

*Escalante National Monument or immediately adjoining state and federal public lands, since January 20, 2017.*

14. *All documents memorializing correspondences and communications, whether written, electronic or oral, between any Bureau of Land Management officials, including but not limited to officials in the BLM Utah State Office and in any BLM Field Office in Utah, and any White House official, relating to changes or potential changes to the designation, boundaries, design, or management plan for Grand Staircase-Escalante National Monument or immediately adjoining state and federal public lands, since January 20, 2017.*

15. *All documents memorializing correspondences and communications, whether written, electronic or oral, between any Department of the Interior official and any Department of Justice official, relating to changes or potential changes to the designation, boundaries, design, or management plan for Grand Staircase*

*Escalante National Monument or immediately adjoining state and federal public lands, since January 20, 2017.*

16. *All documents memorializing correspondences and communications, whether written, electronic or oral, between any Bureau of Land Management official, including but not limited to officials in the BLM Utah State Office and in any BLM Field Office in Utah, and any Department of Justice official, relating to changes or potential changes to the designation, boundaries, design, or management plan for Grand Staircase-Escalante National Monument or immediately adjoining state and federal public lands, since January 20, 2017.*

17. *Any directives, orders, cooperative agreements or contracts that were created, received, modified or disseminated after January 20, 2017, relating to any changes or potential changes in the use, extraction of, or access to, resources on Grand Staircase-Escalante National Monument, or immediately adjoining federal or state public lands, and any documents related to such directives, orders, cooperative agreements or contracts.*

18. *All documents memorializing correspondences and communications relating to Grand Staircase-Escalante National Monument, between any organization that is not a part of the federal or state government, including but not limited to non*

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*governmental organizations, corporations, limited liability companies, partnerships, joint ventures and other businesses, or lobbyists, and the Department of the Interior, including any correspondences, communications, and contract bids made by such organizations relating to the extraction or management of natural resources such as coal, oil, gas, minerals, grazing, and ranching, since January 20, 2017.*

19. *All documents memorializing correspondences and communications relating to Grand Staircase-Escalante National Monument, between any organization that is not affiliated with a federal or state government, including but not limited to non*

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*governmental organizations, corporations, limited liability companies, partnerships, joint ventures and other businesses, or lobbyists, and the Bureau of Land Management, including any correspondences, communications, and contract bids made by such organizations relating to the extraction or management of natural resources such as coal, oil, gas, minerals, grazing, and ranching, since January 20, 2017.*

20. *All draft and final documents since January 20, 2017, including but not limited to, all policies, directives, training materials, studies, other guidelines, memoranda, meeting notes, agendas, notes of telephone conversations, and electronic media, assessing the economic impact of Grand Staircase-Escalante National Monument.*

21. *All draft and final documents since January 20, 2017, including but not limited to, all policies, directives, training materials, other guidelines, memoranda, meeting notes, agendas, notes of telephone conversations, and electronic media, assessing the scientific resources available at, or the scientific contributions of, Grand Staircase-Escalante National Monument, including but not limited to the paleontological, archeological, riparian, biological, geological, endangered species, cultural, and historical resources.*

22. *All draft and final documents since the creation of Grand Staircase-Escalante National Monument, relating to grant support or other funding provided to any organization for the purpose of scientific research involving or occurring on Grand Staircase-Escalante National Monument, including but not limited to paleontological, archeological, riparian, biological, geological, endangered species, cultural and historic research.*

23. *Any reports, including drafts of reports, created by, for, or during the tenure of, Interior Secretary Gale Norton that relate to National Monuments created under the Antiquities generally and/or Grand Staircase-Escalante National Monument specifically, and any documents relating to such reports or drafts.*

You have asked us to waive the fees for processing your request. Our FOIA regulations state that bureaus will waive, or partially waive, fees if disclosure of all or

part of the information is:

1. In the public interest because it is likely to contribute significantly to public understanding of government operations or activities, and
2. Not primarily in your commercial interest.

See [43 C.F.R. § 2.45\(a\)](#). Our FOIA regulations also provide four specific criteria that are used to determine whether these two requirements are met. See [43 C.F.R. § 2.48\(a\)](#). Your request does not contain enough evidence to demonstrate you meet each of these criteria.

You have not established that you have the background qualifications, expertise, or demonstrate your ability to analyze, extract, synthesize, or otherwise effectively convey the requested information to the general public in any way.

Your explanation that, “[t]he records requested are not in the public domain”, and “any new information that will be derived from them”, are not sufficient to demonstrate the ability to disseminate the records to a reasonably broad audience of persons interested in the subject, or offered any history of dissemination, or how you intend to use it to increase the level of public understanding of the bureau’s operations that existed prior to disclosure. See *Perkins v. United States Dep’t of Veterans Affairs*, 754 F. Supp. 2d 1 (D.D.C. November 30, 2010).

Additionally, you have not adequately demonstrated your ability to process the requested data, and ability to disseminate the information to the public. Finally, you have not established that the requested information will “be meaningfully informative about government operations or activities” in order to be “likely to contribute” to an increased public understanding of those operations or activities. Therefore, the second criterion **is not** satisfied.

The essential element of any fee waiver determination is whether the release of the particular documents sought in the request will likely contribute significantly to public understanding of the operations or activities of the Government. You have not adequately identified any specific increase in public understanding that would result from such dissemination. Therefore, the third criterion **is not** satisfied.

Because you failed to establish that disclosure of the requested documents is “likely to contribute” to understanding of government operations under criterion two, you cannot “establish contribution to the understanding of a reasonably broad audience of persons interested in the subject” under criterion three, or “establish that disclosure will significantly increase such understanding” under criterion four.

The USGS concludes that you have not satisfied the statutory criteria to be entitled to a fee waiver. Therefore, your fee waiver has been denied pursuant to [43 § C.F.R. 2.47](#).

Furthermore, you filed the request with various bureaus of the Department of the

Interior, and the Office of the Secretary Freedom of Information Act Office has received an identical request from you. On November 6, 2017, the Office of the Secretary requested the bureaus to provide responsive records to the Office of the Secretary, the Office of the Secretary will be coordinating the request and will process your request on behalf of the entire Department. On December 14, 2017, the USGS referred records to the Office of the Secretary, consisting of 91 pages of emails, and approximately 24 attachments to the emails.

The Office of the Secretary will respond directly to you.  
We will administratively close your request.

You do not have to contact the Office of the Secretary at this time, but should you need to do so in the future, you may reach the Office of the Secretary at the following address:

**Office of the Secretary (OS)**

FOIA Officer: Clarice Julka  
MS-7328, MIB  
1849 C Street, NW  
Washington, DC 20240  
Phone: (202) 513-0765  
Fax: (202) 219-2374  
E-Mail: [osfoia@ios.doi.gov](mailto:osfoia@ios.doi.gov)  
Web: <https://www.doi.gov/foia/os>

Mr. Brian May, U.S. Geological Survey, Freedom of Information Act (FOIA) Officer is responsible for this fee waiver denial. Mr. Gabriel Lohr, Attorney-Advisor, U.S. Department of the Interior, in the Office of the Solicitor was consulted.

You may appeal this response to the Department's FOIA/Privacy Act Appeals Officer. If you choose to appeal, the FOIA/Privacy Act Appeals Officer must receive your FOIA appeal **no later than 90 workdays** from the date of this letter. Appeals arriving or delivered after 5 p.m. Eastern Time, Monday through Friday, will be deemed received on the next workday.

**Your appeal must be made in writing.** You may submit your appeal and accompanying materials to the FOIA/Privacy Act Appeals Officer by mail, courier service, fax, or email. All communications concerning your appeal should be clearly marked with the words: "FREEDOM OF INFORMATION APPEAL." You must include an explanation of why you believe the USGS's response is in error. You must also include with your appeal copies of all correspondence between you and USGS concerning your FOIA request, including your original FOIA request and USGS's response. Failure to include with your appeal all correspondence between you and USGS will result in the Department's rejection of your appeal, unless the FOIA/Privacy Act Appeals Officer determines (in the FOIA/Privacy Act Appeals Officer's sole discretion) that good cause exists to accept the defective appeal.

Please include your name and daytime telephone number (or the name and telephone number of an appropriate contact), email address and fax number (if

available) in case the FOIA/Privacy Act Appeals Officer needs additional information or clarification of your appeal.

*DOI FOIA/Privacy Act Appeals Office Contact Information*

Department of the Interior  
Office of the Solicitor  
Attn: FOIA/Privacy Act Appeals Office  
1849 C Street, N.W.  
MS-6556 MIB  
Washington, DC 20240  
Telephone: (202) 208-5339  
Fax: (202) 208-6677  
Email: [FOIA.Appeals@sol.doi.gov](mailto:FOIA.Appeals@sol.doi.gov)

The 2007 FOIA amendments created the Office of Government Information Services (OGIS) to offer mediation services to resolve disputes between FOIA requesters and Federal agencies as a non-exclusive alternative to litigation. Using OGIS services does not affect your right to pursue litigation. You may contact OGIS in any of the following ways:

Office of Government Information Services  
National Archives and Records Administration  
8601 Adelphi – OGIS  
College Park, MD 20740-6001  
Telephone: (202) 741-5770  
Fax: (202) 741-5769  
Toll-free: 1-877-684-6448  
E-mail: [ogis@nara.gov](mailto:ogis@nara.gov)  
Web: <https://ogis.archives.gov>

Please note that using OGIS services does not affect the timing of filing an appeal with the Department's FOIA & Privacy Act Appeals Officer. You also may seek dispute resolution services from our FOIA Public Liaison, Mr. Brian May, USGS Freedom of Information Act (FOIA) Officer, at the following address:

U.S. Geological Survey  
Department of the Interior  
5522 Research Park Drive  
Baltimore, MD 21228  
Telephone: (443) 498-5521  
Fax: (443) 498-5510  
Email: [bmay@usgs.gov](mailto:bmay@usgs.gov)

This completes our response under your request. Should you have any questions, please feel free to contact me at [foia@usgs.gov](mailto:foia@usgs.gov) or (650) 329-4035.

Thank you for your interest in the U.S. Geological Survey.



Sincerely,

//SIGNED//

**Judy Cearley**

Government Information Specialist

U.S. Geological Survey

Department of the Interior

345 Middlefield Road, MS:955

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