

Exhibit 3

Awareness Process
Memo from Cindy Cafaro
May 24th, 2018




United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

MAY 24 2018

Memorandum

To: Assistant Secretaries
Heads of Bureaus and Offices
Bureau/Office FOIA Officers

From: Cindy Cafaro
Departmental FOIA Officer 

Subject: Awareness Process for Freedom of Information Act Productions

For more than 6 years, the Department of the Interior (Department) leadership and the Solicitor's Office (SOL) have been made aware of impending Freedom of Information Act (FOIA) responses on a case-by-case basis. This has allowed the Department's leadership and SOL to efficiently respond to queries and legal ramifications arising from FOIA responses. Given the unprecedented number of incoming FOIA requests¹ and increased FOIA litigation the Department has faced in the past year,² we are formalizing the awareness process to ensure it is consistent and effective.³

The Department will continue to process FOIA requests as usual, including: directing searches for responsive records;⁴ searching for and providing responsive records;⁵ processing responsive records;⁶ and reviewing proposed responses.⁷ After these steps are completed, the awareness process is as follows:

- 1) FOIA personnel search responsive emails and attachments to emails for the names and email addresses of current Department employees who are Presidentially Appointed,

¹ In Fiscal Year (FY) 2016, the Department received 6,428 FOIA requests; in FY 2017, 8,005 FOIA requests; and in FY 2018, to date, more than 5,000 FOIA requests. Some Bureaus have particularly large increases in FOIA requests. For example, in FY 2016, the Office of the Secretary (OS) received 512 FOIA requests; in FY 2017, 1,226 FOIA requests; and in FY 2018, to date, more than 1,000 FOIA requests. For more information, see the Department's [FOIA Annual Reports](#).

² For example, in FY 2016, 24 FOIA cases were filed and handled by SOL's Division of General Law; in FY 2017, 59 FOIA cases; and in FY 2018, to date, more than 40 FOIA cases.

³ Please note that this process, in its entirety, does not apply to the Office of Inspector General's (OIG) FOIA personnel or processes. Other Bureaus should continue, however, to consult with OIG as they normally would for any documents that originated with or contain reference to OIG business, including OIG investigations, audits, or inspections. See [43 C.F.R. § 2.13\(b\)](#) (outlining the consultation and referral process).

⁴ See [383 DM 15 § 15.6.H](#) (outlining the responsibilities of the office and/or employee that will be making a final decision on a particular FOIA request).

⁵ See [383 DM 15 § 15.6.L](#) (outlining the responsibilities of all employees of the Department to respond promptly and accurately to FOIA-related requests).

⁶ See [5 U.S.C. §§ 552\(a\)\(8\) & \(b\)](#) (outlining FOIA exemptions and foreseeable harm); [43 C.F.R. § 2.13\(b\)](#); see also [383 DM 15 § 15.6.H](#); and the Department's [Foreseeable Harm Standard Memorandum](#).

⁷ See [43 C.F.R. § 2.23\(c\)](#) (requiring Bureaus to consult with SOL before withholding a record in full or in part).

Senate Confirmed (PAS), Non-Career Senior Executive (NCSE), and/or Schedule C employees.

- 2) If the names of current Department employees who are PAS, NCSE, and/or Schedule C employees are identified:
 - i. FOIA personnel notify each PAS, NCSE, and/or Schedule C employee identified in responsive emails and provide him/her access to the full set of responsive records⁸ (in the same format and with the same withholdings that have been approved by SOL, so he/she will see the records exactly as the FOIA requester will).
 - ii. FOIA personnel simultaneously notify a SOL attorney. When applicable, this will be the attorney who reviewed the proposed redactions and/or is handling related FOIA litigation, otherwise the FOIA personnel will contact the SOL Division or Region he/she would contact to review proposed redactions.
 - iii. The PAS, NCSE, and/or Schedule C employee(s) and SOL attorney have up to 72 hours to review the responsive records.⁹
 - a. If a reviewer needs a reasonable amount of additional time to review the responsive records, he/she must inform the FOIA personnel within 72 hours.
 - b. If a reviewer does not reply to the FOIA personnel within 72 hours, *his/her silence will be taken as an affirmation that he/she has concluded his/her review.*
- 3) FOIA personnel will then respond to the FOIA requester in accordance with their usual response process.

As you know, FOIA is a statutory requirement, and full and timely compliance with FOIA obligations is expected. The awareness process discussed above does not change the Department's statutory or, when applicable, litigation deadlines and must be conducted within those existing deadlines.

If you need assistance with a particular FOIA request, please contact your Bureau FOIA Officer using the information found at <https://www.doi.gov/foia/contacts>. If you have general FOIA questions, please contact me at (202) 208-5342 or cindy_cafaro@ios.doi.gov.

cc: Sylvia Burns, Chief FOIA Officer
Timothy Murphy, Acting Deputy Solicitor, Division of General Law, Office of the Solicitor
FOIA Contacts

⁸ This is true even if the FOIA personnel is not in the same Bureau as the PAS, NCSE, and/or Schedule C employee identified in responsive emails.

⁹ As noted above, the purpose of this review is to facilitate awareness of the information that will be released after the application of FOIA exemptions. Reviewers are not expected to confirm that the appropriate exemptions have been applied, but may follow up as necessary to understand their basis.