

Exhibit B

SO 3368 FOIA request



UNIVERSITY of
DENVER

STURM COLLEGE OF LAW

FOIA REQUEST

October 22, 2018

U.S. Department of the Interior
Office of the Secretary FOIA Officer
Clarice Julka
MS-7328, MIB
1849 C St., NW
Washington, D.C. 20240

Via email: os_foia@ios.doi.gov

RE: Request for Records Related to Secretarial Order No. 3368

Dear FOIA Officer:

Pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. §552, I request the following records:

- All records on which Deputy Secretary Bernhardt relied in issuing Secretarial Order 3368, titled “Promoting Transparency and Accountability in Consent Decrees and Settlement Agreements,” including all records related to the Order’s estimate that the Department has agreed “to pay more than \$1.7 billion in monetary awards” pursuant to settlement agreements and consent decrees, not including any individual settlement or consent decree into which the Department may have entered.
- All records created between January 20, 2016 and September 11, 2018 and authored by the Secretary, Deputy Secretary, Assistant Secretaries, Solicitor, and Bureau Directors, and their immediate staff, or created by any department employee for use by the Secretary, Deputy Secretary, Assistant Secretaries, Solicitor, and Bureau Directors, addressing the subjects of Secretarial Order 3368, specifically the relationship between settlements and consent decrees and 1) costs, 2) transparency) and 3) the conversion of “a mandatory duty the otherwise discretionary authority of the” Department of the Interior. This request does not include records related to specific settlements or consent decrees or efforts to negotiate specific settlements or consent decrees.
- All records created between January 20, 2016 and September 11, 2018 between the Secretary, Deputy Secretary, Assistant Secretaries, Solicitor, Bureau Directors, Deputy Bureau Directors, the immediate staff of those identified individuals, and persons outside of the Department of the Interior, about the Department’s settlement practices, not including records related to negotiating specific settlements or consent decrees with parties to litigation. Suggested search terms include “sue and settle,” “consent decrees,” “settlements,” “equal access to justice act,” and “EAJA.”

For purposes of the requested records, the identified positions encompass anyone serving in an acting capacity in those positions.

Under 5 U.S.C. §§ 552(a)(3)(A)-(B), I request that the above listed records be produced, if possible, in electronic form that is text searchable.

Under 5 U.S.C. § 552(a)(4)(A)(iii), I request a waiver of all applicable fees, if any, as this request is in the public interest “because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.” First, I am a full time, tenured member of the faculty at the University of Denver Sturm College of Law, itself a non-profit educational institution, and I am not engaged in any profit-making enterprise or business. I thus have no commercial interest to which this request could (or does) pertain. Second, a significant component of my job is to conduct research and write scholarly publication. I write extensively about administrative law and public land law and published one of the leading articles about federal environmental settlement practices.¹ This request will shed light on the Department of the Interior’s current settlement policy and will contribute to the public’s understanding about the government’s operations in this area. It is further likely to contribute to the public’s understanding of government activities because it is intended to form the basis for a future scholarly publication. My record of past publications supports the credibility of future publications. As support, I am attaching a copy of my current curriculum vitae, in which you can see my record of scholarly publications.

In the event that my request for a waiver of fees is denied, please contact me with an estimate of fees before they are incurred. Please also contact me if you have any questions about my request.

I look forward to hearing from you within 20 days (weekends and legal public holidays excepted) as required under 5 U.S.C. § 552(a)(6)(A)i).

Best,



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¹ Courtney R. McVean & Justin R. Pidot, *Environmental Settlements and Administrative Law*, 39 HARV. ENVTL. L. REV. 192 (2015).