



**United States Department of the Interior
Office of Inspector General**

INVESTIGATIVE ACTIVITY REPORT

Case Title [REDACTED]	Case Number [REDACTED]
Reporting Office Sacramento, CA	Report Date January 21, 2010
Report Subject Telephonic Contact with [REDACTED]	

On January 14, 2010, [REDACTED] called the writer regarding the Bureau of Land Management's (BLM) temporary closure, effective May 1, 2008, of the Clear Creek Management Area (CCMA) in Hollister, CA. Following is a summary of the complaint:

[REDACTED] described CCMA as an area used, in part, by the general public for hiking, dirt biking, and off-road vehicles.

Based on the findings listed on an Environmental Protection Agency's (EPA) CCMA Asbestos Exposure and Human Health Risk Assessment (AEHHRA) report, dated May 2008; the BLM-Hollister Field Office (HFO) issued a temporary closure, effective May 1, 2008, to all forms of entry and public use of the CCMA. The main reason for the closure of CCMA was because the EPA report identified areas within CCMA that were contaminated with asbestos. [REDACTED] claimed that BLM received a draft copy of this report in January 2008, but did not take any action until the final copy of the report was published in May 2008. It was reportedly BLM's responsibility to take corrective action to address the discrepancies found in the EPA report immediately after receiving the draft copy in January 2008.

[REDACTED] opined that the reason BLM may have waited until May of 2008 to address the discrepancies could have been because BLM officials may have thought that the risk was overstated.

After reviewing the EPA-CCMA AEHHRA report, [REDACTED] noticed that the report identified most of the asbestos found at CCMA as Chrysotile Asbestos (CA), and only a few instances of Amphibole Asbestos (AA). According to [REDACTED] CA is 800 times less carcinogenic than AA. In 1986, EPA published a report regarding findings from a previous AEHHRA that classified CA and AA as containing the same levels of carcinogens. [REDACTED] thought that BLM utilized data from the 1986 EPA AEHHRA report, and disregarded data from the 2008 report, to support the closure of CCMA.

[REDACTED] obtained emails from BLM-HFO [REDACTED] to EPA officials requesting EPA to remove or change wording included in the EPA CCMA-AEHHRA report dated May 2008, while it was still in draft. [REDACTED] concluded that the purpose of changing the wording in the report was to provide support for CCMA to remain closed for

Reporting Official/Title [REDACTED] / Special Agent	Signature [REDACTED]
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off-road vehicles and that Hollister was biased against off-road vehicles utilizing the CCMA land because hiking was still allowed there.

Based on recommendations listed on a BLM-HFO CCMA Environmental Impact Study (EIS) report, authored by BLM-HFO Environmental Protection Specialist [REDACTED], dated December 2009; the BLM-HFO spent \$1.6 million to construct a decontamination facility at CCMA. The EIS report also recommended that BLM-HFO permanently closed CCMA for off-road vehicle access. [REDACTED] opined that spending \$1.6 million to construct a decontamination facility at CCMA, even though CCMA would probably remain permanently closed, was an example gross mismanagement by BLM-HFO officials.

[REDACTED] stressed that, according to the National Environmental Policy Act (NEPA), a government agency, such as BLM needs to complete an environmental risk assessment before that agency performs any work that alters the landscape of an area. Reportedly, BLM did not conduct an environmental risk assessment at CCMA before constructing a decontamination facility there.

While BLM held public meetings regarding these matters, BLM officials only provided information, and did not answer any questions at those meetings.

Subsequent to this conversation, [REDACTED] provided this writer a copy of an email from [REDACTED] to [REDACTED] EPA, dated April 11, 2008 (Document A). In the email, [REDACTED] cited the following sentence, which was included in the draft EPA CCMA-AEHHRA report, dated January 2008: *"This uncertainty [related to the toxicity parameters of the risk assessment] could mean that the actual risks could be much lower than those estimated in the CCMA assessment and perhaps zero."* [REDACTED] wrote that the statement placed some doubt as to the adequacy of the model used. Further, that the public would ask BLM officials why an emergency decision (closure of CCMA) was based on a model that may not accurately portray the risks to the public. [REDACTED] stated that some words within this sentence were subsequently removed from EPA's final report.

Documents

1. Email from [REDACTED] to [REDACTED], dated April 11, 2008.

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(3) Complex: Over 20 workdays.

(b) Bureaus will exercise due diligence in processing requests in accordance with the requirements of the FOIA. Requesters should assume, unless notified by the bureau, that their request is in the "Normal" track.

(c) A bureau should, if possible, give requesters in its "Complex" track the opportunity to limit the scope of their request in order to qualify for faster processing. A bureau doing so will contact the requester by telephone (which should be promptly followed up by a written communication) or in writing, whichever is more efficient in each case.

(d) See the Department's FOIA home page at <http://www.doi.gov/foia/policy.html> for details.

[74 FR 17092, Apr. 14, 2009]

§2.27 How will a bureau handle a request for information that is contained in a Privacy Act system of records? (See DOI's Privacy Act regulations (Subpart G of this part) for additional information.)

(a) When you request information pertaining to yourself that is contained in a Privacy Act system of records applicable to you (i.e., the information contained in the system of records is retrieved by the bureau using your name or other personal identifier), the request will be processed under both the FOIA and the Privacy Act. If you request information about yourself, you must submit certain identifying information, usually an original signature (see the appropriate Privacy Act system notice and, subpart G of this part) before the bureau will process your request. (Note: If you request information about yourself that is not covered by the Privacy Act, e.g., the information may be filed under another subject, such as an organization, activity, event, or an investigation not retrievable by a name or personal identifier, the request will be treated only as a FOIA request.)

(b) The Privacy Act never prohibits disclosure of material that the FOIA requires to be released. Both a Privacy Act and a FOIA exemption must apply to withhold information from you if the information you seek is contained

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in a Privacy Act system of records applicable to you.

(c) Sometimes a request for Privacy Act information is submitted by a "third party" (an individual other than the person who is the subject of the Privacy Act record). If you request Privacy Act information about another individual, the material will not be disclosed without prior written approval by that individual unless—

(1) The release is provided for under one of the Privacy Act conditions of disclosure (5 U.S.C. 552a(b)), one of which is that Privacy Act information is releasable if it is required to be released under the FOIA, or

(2) In most circumstances, if the individual is deceased. See §2.8(d)(4).

(d) In handling a request covered by paragraph (a) of this section, the fee provisions and time limits under the FOIA will apply, except that with regard to information that is subject to the Privacy Act, the bureau will charge only for duplication and not for search and review time (see appendix C to this part). There will be no charge if the fee for processing the request is \$30 or less.

Subpart D—FOIA Appeals

SOURCE: 67 FR 64530, Oct. 21, 2002, unless otherwise noted.

§2.28 When may I file an appeal?

(a) You may file an appeal when:

(1) Records or parts of records have been withheld;

(2) The bureau informs you that you have not adequately described the records you are seeking, or that it does not possess responsive records and you have reason to believe it does or you question the adequacy of the bureau's search for responsive records;

(3) A decision has not been made on your request within the time limits provided in §2.12;

(4) The bureau did not address all aspects of your request for records;

(5) You believe there is a procedural deficiency (e.g., fees are improperly calculated);

(6) A fee waiver has been denied; or

(7) A request for expedited processing has been denied or not responded to on time. (Special procedures apply to this type of appeal (see §§2.14, 2.29(c), and

2.32(b)). An appeal of this type relates only to the request for expedited processing and does not constitute an appeal of your underlying request for records.

(b) Before filing an appeal, you may wish to communicate with the contact person listed in the FOIA response or the bureau's FOIA Officer to see if the issue can be resolved informally. Informal resolution of your concerns may be appropriate where the bureau has not responded to your request or where you believe the search conducted was not adequate. In this latter instance, you may be able to provide additional information that may assist the bureau in locating records. However, if you wish to file an appeal, it must be received by the FOIA Appeals Officer within the time limits in §2.29.

§2.29 How long do I have to file an appeal?

(a) Appeals covered by §2.28(a)(1), (2), (4), and (5). Your FOIA appeal must be received by the FOIA Appeals Officer no later than 30 workdays from the date of the final response.

(b) Appeals covered by §2.28(a)(3). You may file an appeal any time after the time limit for responding to your request has passed.

(c) Appeals covered by §2.28(a)(6). Your FOIA appeal must be received by the FOIA Appeals Officer no later than 30 workdays from the date of the letter denying the fee waiver.

(d) Appeals covered by §2.28(a)(7). You should file an appeal as soon as possible.

(e) Appeals arriving or delivered after 5 p.m. E.T., Monday through Friday, will be deemed received on the next workday.

[74 FR 17092, Apr. 14, 2009]

§2.30 How do I file an appeal?

(a) You must submit your appeal in writing, *i.e.*, by mail, fax or e-mail, to the FOIA Appeals Officer, U.S. Department of the Interior (see appendix A for the address). Your appeal must include the information specified in paragraph (b) of this section. Failure to send your appeal directly to the FOIA Appeals Officer may result in a delay in processing.

(b) You must include with your appeal copies of all correspondence between you and the bureau concerning your FOIA request, including your request and the bureau's response (if there is one). Failure to include with your appeal all correspondence between you and the bureau will result in the Department's rejection of your appeal, unless the FOIA Appeals Officer determines, in the FOIA Appeal Officer's sole discretion, that good cause exists to accept the defective appeal. The time limits for responding to your appeal will not begin to run until the documents are received.

(c) You also should include in as much detail as possible any reason(s) why you believe the bureau's response was in error.

(d) Include your name and daytime telephone number (or the name and telephone number of an appropriate contact), e-mail address and fax number (if available), in case DOI needs additional information or clarification of your appeal.

(e) If you file an appeal concerning a fee waiver denial or a denial of expedited processing, you should, in addition to complying with paragraph (b) of this section, demonstrate fully how the criteria in §2.19(b) (see appendix D) or §2.14(a) are met. You also should state in as much detail as possible why you believe the initial decision was incorrect.

(f) All communications concerning your appeal should be clearly marked with the words: "FREEDOM OF INFORMATION APPEAL."

[67 FR 64530, Oct. 21, 2002, as amended at 74 FR 17092, Apr. 14, 2009]

§2.31 How will DOI respond to my appeal?

(a) Appeals will be decided by the FOIA Appeals Officer. When necessary, the FOIA Appeals Officer will consult other appropriate offices, including the Office of the Solicitor (in the case of all denials of information and fee waivers, and other technical issues as necessary).

(b) The final decision on an appeal will be in writing and will state the basis for DOI's decision as follows:

(1) *Decision to release or withhold records.* (i) If the FOIA Appeals Officer

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decides to release the withheld records or portions thereof, he/she will make the records available or instruct the appropriate bureau to make them available as soon as possible.

(ii) If the FOIA Appeals Officer decides to uphold in whole or part the denial of a request for records, he/she will advise you of your right to obtain judicial review.

(2) *Non-possession of records.* If the FOIA Appeals Officer decides that the requested records exist, the bureau that has the records will issue a response to you promptly and the FOIA Appeals Officer will close the file on your appeal. If the FOIA Appeals Officer decides that the requested records cannot be located or do not exist, he/she will advise you of your right to treat the decision as a denial and seek judicial review.

(3) *Non-response to a FOIA request.* If a bureau has not issued an appropriate response to your FOIA request within the 20-workday statutory time limit, the FOIA Appeals Officer will direct the bureau to issue a response directly to you as soon as possible. If the bureau responds to your request within 20-workdays after receipt of the appeal, the FOIA Appeals Officer will close the file on your appeal. Otherwise, the FOIA Appeals Officer will advise you that you may treat the lack of a response by the bureau as a denial of your appeal and seek judicial review.

(4) *Incomplete response to a FOIA request.* If a bureau has not issued a complete response to your FOIA request, the FOIA Appeals Officer will direct the bureau to issue a complete response directly to you as soon as possible, and provide you with the name and telephone number of a contact person. The FOIA Appeals Officer will close your FOIA appeal and advise you that you may treat the incomplete response by the bureau as a denial of your appeal and seek judicial review.

(5) *Procedural deficiencies.* If the FOIA Appeals Officer decides that the bureau was in error, he/she will instruct the bureau to correct the error and advise you accordingly. If the FOIA Appeals Officer decides that the bureau acted properly, he/she will deny your appeal and advise you of your right to seek judicial review.

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(6) *Fee waiver denials.* If the decision is to grant your request for a fee waiver, the FOIA Appeals Officer will advise the appropriate bureau of the Department's decision and instruct the bureau to proceed with processing the request or to refund any monies you have paid. If the decision is to deny the fee waiver request, the Department will advise you of your right to seek judicial review. You also should contact the bureau office to make further arrangements to process your request if you still wish to obtain the records.

(7) *Denial of expedited processing.* If the FOIA Appeals Officer decides to grant expedited processing, he/she will direct the bureau to process your request as soon as practicable. If your request for expedited processing is denied on appeal, the FOIA Appeals Officer will advise you of your right to seek judicial review of the denial of expedited processing.

§2.32 How long does DOI have to respond to my appeal?

(a) The statutory time limit for responding to an appeal is 20 workdays after receipt of an appeal meeting the requirements of §2.30.

(b) If you request expedited processing of your appeal, you must demonstrate to the Department's satisfaction that the appeal meets one of the criteria under §2.14(a). The FOIA Appeals Officer will advise you whether the Department will grant expedited processing within 10 calendar days of its receipt of your appeal. If the FOIA Appeals Officer decides to grant expedited processing, he/she will give your appeal priority and process it ahead of other pending appeals.

(c) If you have not received a decision on your appeal within 20 workdays, you have the right to seek review in a District Court of the United States (see 5 U.S.C. 552(a)(4) and (6)). In the event that the Department is unable to reach a decision within the given time limits, the FOIA Appeals Officer will notify you of the reason for the delay and the right to seek judicial review.