

CAUSE of ACTION INSTITUTE

Pursuing Freedom & Opportunity through Justice & AccountabilitySM

March 12, 2018

VIA CERTIFIED MAIL

The Honorable Ryan Zinke
Secretary of the Department of the Interior
1849 C Street, N.W.
Washington, D.C. 20240

Re: The Bureau of Land Management's Recommendations to Amend the Freedom of Information Act

Dear Secretary Zinke:

We write on behalf of Cause of Action Institute (“CoA Institute”), a nonprofit, nonpartisan government accountability organization.¹ Its *pro bono* legal representation of organizations and individuals helps to educate the public about and defend against government abuse, wasteful spending, and corruption. CoA Institute also is a frequent requester of information through the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552.² Additionally, CoA has, on numerous occasions, raised issues regarding transparency matters with the Department of the Interior.³

It was recently revealed that in September 2017, the Bureau of Land Management (“BLM”) produced the *BLM Report in Response to Secretarial Memorandum on Improving Planning and NEPA Processes and Secretarial Order 3355* (the “BLM Report”). The BLM Report calls for “expanded exemptions” under the FOIA and, more alarmingly, limitations and the imposition of increased fees on FOIA requestors.⁴ CoA Institute believes that these recommendations are in contravention of public policy, as well as, wholly unnecessary, as they do not fix the perceived impacts on effective coordination and engagement nor do they minimize alleged “redundancies.” A transparent and open government decision-making process is the pinnacle of effective governance and management, not a bar to its success.

The BLM Report specifically suggests that the FOIA be amended to “[l]imit the number of FOIA requests from any one group, requir[e] more stringent justification for fee waivers, and

¹ See CAUSE OF ACTION INSTITUTE, *About*, <https://causeofaction.org/about/>.

² CoA Institute currently has approximately 10 pending FOIA requests at various stages of processing with the Department of the Interior and its component parts, including BLM.

³ Kara McKenna, Opinion, *Trump's Monument Review Is as Secretive as Obama's Designations*, THE HILL, Sept. 6, 2017, available at <http://thehill.com/blogs/pundits-blog/energy-environment/349299-trumps-monument-review-is-as-secretive-as-obamas?rnd=1504643903>; Comment from CoA Institute to the Dep't of Interior, DOI-2017-0002-780546 (Jul 10, 2017); Comment from CoA Institute to the Dep't of Interior, DOI-2017-0002-112339 (May 26, 2017); Letter from CoA Institute to Hon. Ryan Zinke, Sec'y of the Interior (Apr. 27, 2017) available at <http://coainst.org/ZinkeLetter>.

⁴ DEP'T OF THE INTERIOR, BUREAU OF LAND MGMT., *BLM REPORT IN RESPONSE TO SECRETARIAL MEMORANDUM ON IMPROVING PLANNING AND NEPA PROCESSES AND SECRETARIAL ORDER 3355* (Sept. 27, 2017) [hereinafter *BLM Report*].

increase[] search and redaction fees.”⁵ The latter of which the BLM argues will allow the agency to “recover all of its direct costs.”⁶ “Limit[ing] the number of FOIA requests from any one group” is in direct contravention of the purpose of the FOIA—to allow citizens to know what their government is doing.⁷ Organizations, like CoA Institute, serve a vital role in making sure the government is accountable to the people by conducting investigations and oversight of agencies through the use of FOIA requests, as well as other tools. Any arbitrary limitation on the ability to make FOIA requests unnecessarily hampers that role. Further, “more stringent justification[s] for fee waivers” could lead to the weaponization of fee waivers and allow agencies to selectively define FOIA requestors in such a way that they deny access to records and reduce their accountability to the American people.⁸

As the Supreme Court has observed, “[t]he basic purpose of FOIA is to ensure an informed citizenry, vital to the functioning of democratic society, needed to check against corruption and hold the governors accountable to the governed.”⁹ The proposed FOIA amendments are a clear attack on the principles and purpose of the FOIA and any recommendation or endorsement of such by the Department, or its component parts, is an affront to the people’s right to know. CoA Institute urges the Department of the Interior to rescind these recommendations to Congress and recommit itself to operating in an open and transparent fashion in accordance with the FOIA.



JOHN J. VECCHIONE
PRESIDENT AND CEO

⁵ BLM argues that increases in search and redaction fees will allow it to “recover all of its direct costs.” See *BLM Report* at 14. The BLM Report also suggests that the Bureau be provided “with expanded exemptions under the *Freedom of Information Act* (FOIA) to protect the confidentiality of sensitive information shared by State, Local and Tribal governments, such as reburial information.” Which the BLM argues will “bring BLM in line with exemptions currently available to the U.S. Forest Service.” This suggestion appears to relate to FOIA Exemption 3, which incorporates into the FOIA certain federal nondisclosure provisions contained in other statutes. As our review of the past five years’ Annual FOIA Reports from the Department of the Interior and the Department of Agriculture indicates, all but one of the statutes cited in support of applying Exemption 3 by the U.S. Forest Service was either used or available for use by BLM. The only statute not used or available for use by BLM in our review is, 7 U.S.C. § 8791, which relates solely to “geospatial data of the agencies of the Department of Agriculture.” Further, the only statute we were able to identify that relates to “reburial information,” as cited in the BLM Report, states explicitly that the Secretary of the Interior “shall not disclose under [the FOIA], information relating to” reburied human remains. See 25 U.S.C. § 3056.

⁶ *BLM Report* at 14.

⁷ *Nat’l Archives & Records Admin. v. Favish*, 541 U.S. 157, 171 (2004).

⁸ See generally *Cause of Action v. Federal Trade Comm’n*, 799 F.3d 1108 (D.C. Cir. 2015).

⁹ *N.L.R.B. v. Robins Tire & Rubber Co.*, 437 U.S. 214, 242 (1978).