

47 Four Oaks Road
Bedminster, NJ 07921
October 26, 2009

Mr. Jack O'Brian
Intermountain Regional FOIA Officer
Intermountain Regional Office---NPS
PO Box 25287
Denver, Colorado 80225

Re: IMR/09-145C

Dear Mr. O'Brian:

I have received your letter of October 5, 2009 along with Bill Nelligan's email sent to you the same day.

Needless to say, I am both puzzled and confused by Bill Nelligan's response on which you based your letter.

I am puzzled since I'm not sure how I could have said it more plainly in my modified request dated September 8, 2009. As you may recall, I had written:

I have prioritized my request and put the information I am seeking in numerical order of importance. I request that you or those at Mesa Verde National Park who will be gathering the information start with the first item and work your way down the list in numerical order. And when I have used up the two hours of free research time to which I am entitled, please stop. If the total number of copies eventually exceeds my entitled 100 pages, I am willing to pay any reasonable cost.

I am not sure how I could have said it more clearly, and so in my new restated, modified request I simply restated these instructions with one minor addition. Consequently my request now repeats these instructions:

I am uncertain how I can be any clearer, so let me restate those instructions: **I have prioritized my request and put the information I am seeking in numerical order of importance. I request that you or those at Mesa Verde National Park who will be gathering the information start with the first item and work your way down the list in numerical order from number 1 to number 7. And when I have used up the two hours of free research time to which I am entitled, please stop. If the total number of copies eventually exceeds my entitled 100 pages, I am willing to pay any reasonable cost.**

I am also puzzled by Bill Nelligan's and your response since I have reconsidered my time estimates, and I believe they are still very accurate and very reasonable. Almost all of the information I have requested can be found in pre-existing, easily printed computer reports or can be copied without difficulty from regular financial reports and documents.

And contrary to Bill Nelligan's email, in my second, modified RFI, **I had changed the RFI substantially.** Specifically, I had changed every request to be a search for specific official documents and records; and I had eliminated the two requests which might have involved the answering of lengthy questions, the expenditure of more time and research, and the generation of previously non-existent records. Specifically I had eliminated both the requests asking for a detailed analysis of travel budgets in the park, and the request asking for an analysis of how money was being transferred from account to account within the park budget. I did this because frankly I suspect there are other divisions and agencies of the government---- such as the Office of the Inspector General ----that are better qualified to pursue those kinds of questions.

More importantly, I am confused because I don't understand how the process through which we are going conforms to the directives you have been given by the President, the Secretary of the Interior, and the Attorney General.

To be sure, how are you complying with the President's memorandum of January 21, 2009, that...."all agencies should adopt a presumption in favor of disclosure..." and that "agencies should take affirmative steps to make information public. " How does the process through which we are going comply with the Secretary of Interior's memorandum of July 2, 2009, in which he described a new presumption of openness and a "new era of open Government?" When the Secretary writes: "FOIA professionals should be mindful of their obligation to work "in a spirit of cooperation" with FOIA requesters, as President Obama has directed." The Secretary goes on to write: "Unnecessary bureaucratic hurdles have no place in the "new era of open Government" that the President has proclaimed." And how are you responding to the Attorney General's memorandum of March 9, 2009 when he quotes the President when he says, "in the face of doubt, openness prevails." And then the Attorney General continues by writing: "This presumption has two important implications.

First, an agency should not withhold information simply because it may do so legally. I strongly encourage agencies to make discretionary disclosures of information.

Second, whenever an agency determines that it cannot make full disclosures of a requested record, it must consider whether it can make partial disclosure."

In contrast to a spirit of openness and transparency, or a new spirit of cooperation, I have felt just the opposite. From the very beginning , and continuing with Bill Nelligan's most recent email and your most

recent letter, Mr. O 'Brian, I have felt a conspiracy of intransigence, the determined denial of every request, and a solid and stubborn opposition to a spirit of openness and transparency. To be sure, your letter of October 5, 2009, seems to be no more than a carefully calculated effort to discourage me---- it simply ignored the previous instructions of my revised and modified RFI, it unreasonably exaggerated the number of hours required to fulfill my modified RFI, and it chose to charge the highest possible rate for any FOIA request.

For many people, two stories are slowly developing. The first is a story about why the management of Mesa Verde National Park is so unwilling to disclose any of its financial records and documents. What is it trying to hide? Why is it so opposed to a spirit of openness and transparency, and to a spirit of cooperation with FOIA requesters? The second story that is developing is how the FOIA process can be used by tenured government employees to frustrate, discourage, and delay the release of information that is supposed to be public and readily available. In this second story, not only is the management of Mesa Verde NP guilty, but increasingly the Intermountain Regional Office of the NPS. For instance, did anyone at the Intermountain FOIA office ever question Bill Nelligan about his estimates of the time required to fulfill my RFI? Did anyone really read my second, modified RFI and suggest to Bill Nelligan that maybe he missed something, and that the RFI had been significantly changed, and that there had been a self-imposed two hour limit already included in the request?

As you can ascertain, I am unhappy with how long this process is taking, and with how difficult it has been to get some very basic financial information about Mesa Verde National Park. With each delay, I've become more suspicious and more curious. If everything was being managed the way it is supposed to be managed, if money isn't being wasted, if no one has anything to hide, and if appropriate supervision and oversight is being exercised at every level of the National Park Service, why would there be such resistance to openness and transparency?

Having been an elected and appointed public official in New Jersey, I do believe in openness and transparency. And so I should let you know ...

- that I have posted and will continue to post all of our letters, correspondence, and emails on the internet at <http://schundler.net/FOIA.htm>.
- that I am sending updates of our progress to date to Alexandra Mallus who is the Department of Interior's FOIA Officer in Washington, D.C. and Charis Wilson, the National Park Service's acting FOIA Officer who is located in your Denver office. I am sending these updates so they can appreciate how long it can take to get information in spite of the memorandums and desires of our President.
- that I am writing a letter to the new director of the National Park Service so he too can see how long it can take to get information in spite of the memorandums and desires of our President, the Attorney General, and the Secretary of the Interior.

I thank you in advance for your efforts, I appreciate what you are doing to fulfill the requirements of the Freedom of Information Act and the directives of the President, and I look forward to hearing from you and to receiving the information I have requested soon.

Looking ahead,

Bruce E. Schundler

cc: Allexandra Mallus FOIA Officer of the Department of Interior in Washington, D.C.
 Charis Wilson Acting FOIA Officer of the National Park Service
 Jon Jarvis Director, the National Park Service