

47 Four Oaks Road
Bedminster, NJ 07921
December 4, 2009

Charis Wilson
Acting NPS FOIA Officer
12795 W. Alameda Parkway
P.O. Box 25287
Denver, CO 80225

Dear Charis Wilson:

I am writing in the hope of convincing you to contact Mesa Verde National Park and suggesting to them that they send me all the information I requested in my formal modified RFI dated September 8, 2009, to send the information as quickly as possible, and to make sure the information is accurate and complete.

As you know, I did appeal the amount of information and the quality of information I was given by Mesa Verde National Park. You also know that in the interest of openness and transparency, I created a web page about my FOIA request--- www.schundler.net/FOIA.htm ---and on it I have included all of our letters and emails. Recently a number of FOIA blog sites and FOIA-related web sites have taken note of what has been happening, and at least one major metropolitan newspaper is paying attention. Even more interesting has been how quickly search engines like Google have incorporated and listed the information. Just type in "FOIA NPS" or "Larry Wiese NPS" or "Bill Nelligan NPS" and see what is listed on Google.

Mesa Verde National Park has nothing to lose and a lot to gain by responding to my request quickly and completely.....and to do so before the results of the appeal are made public and before any other decision is rendered.

- Mesa Verde is not accustomed to giving out information to the public, but if it continues doing this, it will be battling against a tide of federal laws, regulations, directives and memorandums. As the President has written, "All agencies should adopt a presumption in favor of disclosure in order to renew their commitment to the principles embodied in FOIA, and to usher in a new era of open Government." (President's memorandum of January 21, 2009) The days when a public agency funded by public money can operate without public scrutiny are changing, and in many situations they have already changed. So why not suggest to Mesa Verde National Park that it is time to change course? Why not suggest they commit to conforming to the letter and intent of a "new era of open Government," and why not suggest they go beyond the letter of the regulations the park has been using to delay the process and use the intent and spirit of the regulations to release information I have requested?

Considering everything, what would the park sacrifice or give up or lose, if it simply gave out the information I have requested right away?

- Also in his memorandum of January 21, 2009, the President wrote, "The Government should not keep information confidential merely because public officials might be embarrassed by disclosure, because errors and failures might be revealed, or because of speculative or abstract fears." If Mesa Verde NP was delaying the release of information simply because it was trying to protect Larry Wiese, or was doing so under his direction, he has now retired and left the Park Service (effective November 2, 2009), and so the incentives for non-disclosure have changed.

Similarly, if the park was delaying the release of information because it was afraid the information would eventually lead to a more formal investigation of the financial practices of Mesa Verde National Park and of its former Superintendent, that now is a mute point. I think we all know an active investigation is being conducted.

- Sometimes government employees can appear to be more interested in job security, in creating more work and not less work, and in justifying their jobs and positions than in solving problems, resolving conflicts, or completing jobs and tasks. Instead of quickly replying to my request and moving on, hours and hours have been spent in conversations and emails and letters, and in estimates of how much time it would take to search and review information even after I had put a two hour limit on how much time should be spent on my request. Estimates of the fees I would have to pay for my RFI were carefully generated, time was spent reviewing the Code of Federal Regulations, and time was spent writing and reviewing letters between and among the many players in this small drama. Some critics would describe this process as “government at its worse.” Others would describe it as no more than featherbedding, as attempts to lengthen the work day with unnecessary activity, or as examples of how inefficient our government can be. Unfortunately, sometimes the inefficiencies of government can be overlooked and excused, but sometimes they begin to look like incompetency and obstruction.

So what would be lost if suddenly the park said enough was enough....and just generated the information I had requested? Imagine how that would appear to those following our correspondence, or how it would appear to the press, or to the various FOIA sites? For Mesa Verde NP and for the Park Service, it would be a public relations coup de grace---quickly ending this entire FOIA episode; it would shed a very different and very positive light on the new administration of Mesa Verde National Park; and it would make people notice that sometimes things can change.

Not only would the park have nothing to lose by giving out the information I requested, it could gain a lot:

- As one of my friends wrote me: “What they don't seem to understand is that stonewalling sends a message that says "I have something to hide." That is PR 101.” By immediately sending me all the information I requested, Mesa Verde National Park would send a message that they have nothing to hide. It would be an admission that they may have made some mistakes while guided and managed by a Superintendent who is no longer there, but that they want to begin a new chapter of openness and transparency. Simply stated, giving out the information now would be good PR! It would keep the black eye the park has gotten from getting darker and darker, and it would offer some hope for healing. It would be a presumptive strike against the cynics and skeptics who believe the park will never change, will never see the light, and will never let the public easily peruse how public funds are being spent.
- Bill Nelligan, the Acting Superintendent at Mesa Verde NP, is trying to review park policies and practices. He is taking a fresh approach to visitor services, and a more diligent approach to the 2010 fiscal year budgeting process. By releasing the information I have requested without being ordered to do so by an appeals officer or judge, Bill Nelligan would demonstrate that Mesa Verde NP is trying to change and improve not only what it offers visitors and how it budgets its money, but also its willingness to conform to the overwhelming tide of laws, regulations, directives and memorandums that have ordered a new era of openness and transparency.

Conversely, if Mesa Verde continues to delay the process and/or if it continues to give out nothing before it is forced to do so by decree, then it may appear that some behaviors and some attitudes are so entrenched and embedded, that more definitive action has to be taken. So why not put another feather in his cap, why not demonstrate how different and proactive Mesa Verde NP can be in its conformance to the memorandums and directives of the President, the Secretary of the Interior, the Attorney General, and to the current laws and regulations of our country?

- By disclosing the information I had requested now, the park can save itself a lot of time and energy. I suspect all the information I have requested has already been researched, reviewed, and compiled in response to inquiries by other agencies of the Department of the Interior and so increasingly the time and energy required to fulfill the entire RFI is minimal. The question is: how much time and energy is Mesa Verde National Park and the Park Service willing to expend to extend, to delay, and to prolong this inquiry?

I believe at this stage, several outcomes are possible:

- The NPS FOIA Appeals Officer will rule in my favor and you will be ordered to give out the information.
- The NPS FOIA Appeals Officer will rule in your favor. If this happens, I could decide to take legal action, or I could explain what happened on my web site and simply let others pursue my inquiry.

In any event, I suspect the information I have requested will be released...the question is just when, and how long it will take, and how much time and energy Mesa Verde National Park and the National Park Service is willing to spend to delay the release of information which is in the public domain, which should have been made available quickly and efficiently months ago, and which is not exempted by any of the exemptions permitted by the Freedom of Information Act.

Finally let me emphasize that I am continuing with this RFI because I love the Park Service and I love our national parks; I also believe in our system of government and in the checks and balances that have been created to protect it. As President Obama wrote on the day of his inauguration:

“A democracy requires accountability, and accountability requires transparency. As Justice Louis Brandeis wrote, "sunlight is said to be the best of disinfectants." In our democracy, the Freedom of Information Act (FOIA), which encourages accountability through transparency, is the most prominent expression of a profound national commitment to ensuring an open Government. At the heart of that commitment is the idea that accountability is in the interest of the Government and the citizenry alike.”

Hopefully, Ms. Wilson, you can convince the management of Mesa Verde National Park to send me all the information I requested, and to make sure the information is accurate and complete. And hopefully, you can convince them that at this stage, it makes sense to do this now and to do it as soon as possible...in part because they have nothing to lose and everything to gain by doing so.

Looking ahead.....

Bruce Schundler