

EXHIBIT 62

ATTACHMENT A-1
COMPILATION OF EMAILS

Bill Floyd

From: Bill Floyd <wcbfloyd@ix.netcom.com>
Sent: Tuesday, November 21, 2017 10:21 AM
To: 'Meloche, Douglas -FS'
Cc: Gaulke, Peter T -FS; anicholas@fs.fed.us; karney@fs.fed.us; wcbfloyd@ix.netcom.com
Subject: RE: FLOYD 11212917 Response to USFS Email re FOIA dated October 27, 2017 and Floyd FOIA dated September 22, 2017 USFS Control #2018-FS-R8-00827-F
Attachments: Floyd 11212017 Response FINAL Meloche email Nov 8 2017 2 08 pm Nov 16 2017 8 24 am.pdf
Importance: High

Mr. Meloche

I remain disappointed that the USFS won't join with me to solve the excessive embedded sediment problem that plagues an extended segment of the Chattooga's headwaters in North Carolina.

Unfortunately, I must continue to object to how the USFS has recently decided to refuse to process my Freedom of Information Act ("FOIA") requests for records—unless I comply with certain demands being made by the Region 8 of the USFS.

Attached is a detailed response dated November 21, 2017 regarding your recent comments on both of the subject FOIAs.

I realize it is a short week. However, I hope the USFS will consider my complaints and demands as soon as possible.

Regards

Bill Floyd

From: Meloche, Douglas -FS [mailto:dmeloche@fs.fed.us]
Sent: Thursday, November 16, 2017 8:24 AM
To: Bill Floyd
Cc: Gaulke, Peter T -FS; Nicholas, Allen -FS
Subject: RE: FOIA Request #2018-FS-R8-00827-F

Mr. Floyd,

I am emailing you to provide a status of your current request and also clarify a problem with your new request. As of today, you have one FOIA request that has been submitted (2018-FS-R8-00827-F). This request was originally submitted on September 22, 2017 and finally perfected on November 6, 2017. This request asked for the following records:

1. *For the period of time between July 1, 2017 and September 6, 2017, any and all internal communications between any USFS personnel, including emails and handwritten notes, that in any way mentions, references, or that instructs or provides orders about how to discharge the decision of Ms. Heather Luczak to advise Bill Floyd via email on September 6, 2017 @ 10:05 am, that "that there is no need to revisit the analysis at this time", including but not limited to any such communications transmitted or received by any of the following groups:*
 - a. *the current Chief of the United States Forest Service, Mr. Tony Tooke, and any of the Chief's Office Staff*
 - b. *any executive leadership or staff personnel currently assigned to the Region 8, Southern Regional office in Atlanta*

- c. *any leadership or staff personnel working within the Nantahala and Pisgah National Forests;*
2. *Subsequent to January 1, 2017, any and all sedimentation studies conducted to monitor and recognize any negative environmental impacts taking place on the North Carolina section of the Chattooga, as necessitated by the terms of Amendment #22 to the Nantahala and Pisgah Forests Land Resource Management Plan (January 2012);*
 3. *any and all monitoring studies specifically conducted to assess and inventory any creek boating caused displacement of soils lying within North Carolina's trout buffer subsequent to the start of creek boating on December 1, 2012;*
 4. *any associated communications, emails, memorandums, reports, or documents of any kind exchanged internally between USFS personnel, or exchanged with any external third party, summarizing, analyzing, or describing the significance of the results and details contained within all such monitoring studies enumerated in (2) and (3);*
 5. *any internal USFS communications, including emails and handwritten notes, discussing the need to conduct such monitoring in response to public complaints;*
 6. *For the period from January 1, 2012 going forward, please provide any back and forth emails, correspondence, or written documents of any kind, either received from American Whitewater, or any representative of American Whitewater, or alternatively transmitted to American Whitewater by any USFS official.*

This request (2018-FS-R8-00827-F) is currently on hold pending a fee waiver determination. Please remember, the timeline for processing a request **does not** begin until the request is considered by the agency to be perfected. A request is considered perfected when it meets all of the following requirements: (1) Is received in writing, (2) Clearly describes the records sought, and (3) Contains a statement about willingness to pay or a request for a fee waiver. This request (2018-FS-R8-00827-F) was finally perfected on November 6, 2017.

On a separate matter, the following request for records: *"I now reiterate that FOIA demand to you—to be provided with any relevant documents including but not limited to emails, internal memoranda, etc. discussing any aspect of the decision to have my September 22, 2017 FOIA processed by Region 8 instead of by the Nantahala National Forest—including any written communications created by you, Peter T. Gaulke, or anyone working within the office and staff of the Chief of the United States Forest Service."* was not considered as part of your FOIA request #2018-FS-R8-00827-F. If you are now requesting these records, the request will be considered a new FOIA request.

As such, if it is your intent to request these records, you did not indicate your willingness to pay fees or ask for a fee waiver. The FOIA establishes four categories of requesters; commercial use requesters, educational and noncommercial scientific institutions, representatives of the news media and all other requesters. It seems you are asking for this information under the category of an "all other requester". Because of this and in accordance with 7 C.F.R. Subtitle A, Part 1, Subpart A, Appendix A, we are required to collect fees for search, review and duplication of records. While the Forest Service (FS) does provide 2 hours of search time and the first 100 pages of records to requestors in your category (All Other), requests are not processed unless the requestor agrees to a willingness to pay fees or ask for a waiver. Basically, as stated above, the request must be perfected before it can be processed any further. The timeline has not begun.

If the requestor indicates a willingness to pay (all fees, \$25, up to \$100 etc.) they are considered to be "all in" for the total cost of processing the request. That is why many requestors indicate a set amount or ask to be contacted if a set amount is not enough. A fee estimate will be provided prior to any search or reproduction of records and should the requestor agree to the fee, a bill of collection will be prepared and sent to the requestor along with the records responsive to the request. We will not hold records until the fee is paid unless the requestor is delinquent of previous request fees or the amount is large enough where we are required to receive a portion of fees beforehand.

If you feel you are entitled to a fee waiver, I have again attached a fee waiver criteria sheet for you to use as a guide to prepare your response. Please answer the six questions in full as they apply to the information you are requesting and your current status as an "all other" requestor.

Again, as mentioned previously, before we can continue to process your new request it must be perfected. Please respond with a willingness to pay fees (set amount, all, only \$25, etc.) or provide me with a response to the six fee waiver criteria to begin the processing of a fee waiver determination. Please limit your response regarding this new request to the requested information only since it has become increasingly difficult to differentiate between your questions and comments on current forest activities and your previous FOIA requests. If we do not hear from you about this new request by December 1, 2017, we will consider your request withdrawn and administratively close the file.

I encourage you to contact me at the below number should you have any questions about your current request (2018-FS-R8-00827-F) or for any assistance in perfecting this new request.

Best,
Doug M.



Douglas J. Meloche
Staff Assistant

Forest Service
Law Enforcement & Investigations, Southern Region

p: 404-347-4427

f: 404-347-1849

dmeloche@fs.fed.us

1720 Peachtree Rd., NW, Suite 870S

Atlanta, GA 30309

www.fs.fed.us



Caring for the land and serving people

From: Bill Floyd [<mailto:wcbfloyd@ix.netcom.com>]

Sent: Wednesday, November 15, 2017 3:33 PM

To: Meloche, Douglas -FS <dmeloche@fs.fed.us>

Cc: Gaulke, Peter T -FS <pgaulke@fs.fed.us>; Arney, Ken S -FS <karney@fs.fed.us>; Nicholas, Allen -FS <anicholas@fs.fed.us>; wcbfloyd@ix.netcom.com

Subject: Reasonably Described FOIA Already Submitted October 27 2017 But Not Yet Adcknowledged by USFS With Appropriate Date of Receipt

Importance: High

Mr. Meloche

With respect to your email of November 13, 2017 @ 1:17 PM please see my attached correspondence to you.

Thank you.

Bill Floyd

From: Meloche, Douglas -FS [<mailto:dmeloche@fs.fed.us>]

Sent: Monday, November 13, 2017 1:17 PM

To: Bill Floyd

Cc: Luczak, Heather L -FS; Milholen, Carol -FS

Subject: New FOIA Request

Mr. Floyd,

I am emailing you to determine if in fact you wish to submit a new Freedom of Information (FOIA) request for the below information or if this is an amendment to your most recent request that is currently on hold? The below paragraph was located on page 17 of the attachment to your email of 11/6/2017.

"I now reiterate that FOIA demand to you—to be provided with any relevant documents including but not limited to emails, internal memoranda, etc. discussing any aspect of the decision to have my September 22, 2017 FOIA processed by Region 8 instead of by the Nantahala National Forest—including any written communications created by you, Peter T. Gaulke, or anyone working within the office and staff of the Chief of the United States Forest Service."

Please let me know as soon as possible. If you have any questions, please contact me at the below number.

Best,
Doug M.



Douglas J. Meloche
Staff Assistant

Forest Service
Law Enforcement & Investigations, Southern Region

p: 404-347-4427

f: 404-347-1849

dmeloche@fs.fed.us

1720 Peachtree Rd., NW, Suite 870S

Atlanta, GA 30309

www.fs.fed.us



Caring for the land and serving people

This electronic message contains information generated by the USDA solely for the intended recipients. Any unauthorized interception of this message or the use or disclosure of the information it contains may violate the law and subject the violator to civil or criminal penalties. If you believe you have received this message in error, please notify the sender and delete the email immediately.

Bill Floyd

From: Bill Floyd <wcbfloyd@ix.netcom.com>
Sent: Wednesday, November 15, 2017 3:33 PM
To: 'Meloche, Douglas -FS'
Cc: Gaulke, Peter T -FS; karney@fs.fed.us; anicholas@fs.fed.us; wcbfloyd@ix.netcom.com
Subject: Reasonably Described FOIA Already Submitted October 27 2017 But Not Yet Adcknowledged by USFS With Appropriate Date of Receipt
Attachments: Floyd Response to D Meloche email of Nov 13 2017 at 1 17 pm.pdf
Importance: High

Mr. Meloche

With respect to your email of November 13, 2017 @ 1:17 PM please see my attached correspondence to you.

Thank you.

Bill Floyd

From: Meloche, Douglas -FS [<mailto:dmeloche@fs.fed.us>]
Sent: Monday, November 13, 2017 1:17 PM
To: Bill Floyd
Cc: Luczak, Heather L -FS; Milholen, Carol -FS
Subject: New FOIA Request

Mr. Floyd,

I am emailing you to determine if in fact you wish to submit a new Freedom of Information (FOIA) request for the below information or if this is an amendment to your most recent request that is currently on hold? The below paragraph was located on page 17 of the attachment to your email of 11/6/2017.

"I now reiterate that FOIA demand to you—to be provided with any relevant documents including but not limited to emails, internal memoranda, etc. discussing any aspect of the decision to have my September 22, 2017 FOIA processed by Region 8 instead of by the Nantahala National Forest—including any written communications created by you, Peter T. Gaulke, or anyone working within the office and staff of the Chief of the United States Forest Service."

Please let me know as soon as possible. If you have any questions, please contact me at the below number.

Best,
Doug M.



Douglas J. Meloche
Staff Assistant
Forest Service
Law Enforcement & Investigations, Southern Region
p: 404-347-4427
f: 404-347-1849
dmeloche@fs.fed.us

4110 Quail View Road
Charlotte, NC 28247

wcbfloyd@ix.netcom.com

15, 2017

November 6, 2017

the date of this correspondence is incorrect. It was submitted as an attachment to an email dated Nov 15 2017 @ 3:33 pm

This correspondence relates to the Oct 27 2017 FOIA

Re: Response to Regional FOIA Coordinator Meloche Email Dated November 13, 2017 @ 1:17 PM

VIA EMAIL dmeloche@fs.fed.us

Mr. Douglas J. Meloche
Regional FOIA Coordinator
Southern Region (8)
1720 Peachtree Road NW Suite 870S
Atlanta, GA 30309

Dear Mr. Meloche:

This correspondence responds to your email of November 13, 2017 @ 1:17 pm.

To clarify, your email states:

I am emailing you to determine if in fact you wish to submit a new Freedom of Information ...request for the below information or if this is an amendment to your most recent request that is currently on hold? The below paragraph was located on page 17 of the attachment to your email of 11/6/2017.

' I now reiterate that FOIA demand to you—to be provided with any relevant documents including but not limited to emails, internal memoranda, etc. discussing any aspect of the decision to have my September 22, 2017 FOIA processed by Region 8 instead of by the Nantahala National Forest—including any written communications created by [Regional Forester Arney], Peter T. Gaulke, or anyone working within the office and staff of the Chief of the United States Forest Service. ' (italics in original document).

I must disagree with your implied characterization of certain facts as suggested above. I hope this will help eliminate any confusion that you and the United States Forest Service might have with respect to this small matter.

First, as the record demonstrates, a FOIA request was already formally tendered back on October 27, 2017—in correspondence directed to your attention as Regional FOIA Coordinator.

Stated differently, I don't understand why you suggest "I am emailing you to determine if in fact you wish to submit a new Freedom of Information...request." On October 27, 2017, a

“reasonably described” FOIA request was set forth on page 1&2 of my letter to you in your capacity as the Regional FOIA Coordinator.

Stated differently, please recognize that the date of receipt for that FOIA must be fixed as October 27, 2017.

The October 27, 2017 FOIA request was “reasonably described” as follows:

“Was the referral of my FOIA to Region 8 compelled by an order from the Regional Forester or was the referral voluntarily initiated by Forest Supervisor Nicholas and his staff?”

To the extent there are relevant documents relating to this question, please provide them to me under the Freedom of Information Act.”

I sincerely hope that the Forest Service does not wish to question whether or not this constitutes a “reasonably described” FOIA—although I would be happy to find out what a final authority would have to say about this. The Forest Service has evidenced a pattern and practice of unnecessarily delaying my information gathering efforts in the past—and those delays have been documented.

To press the matter, Congress specifically amended 5 U.S.C. § 552(a)(3)(A) to require that records be merely "reasonably described," rather than "identifiable." *See* H.Rep. No. 93-876, 93d Cong., 2d Sess., *reprinted in* [1974] U.S.Code Cong. & Ad.News 6267, 6271.

This House Report states:

See Ferri v Bell 645 F 2d 1213 3rd Cir 1981

Hall & Associates v USEPA 83 F Supp 3d 92 Dst Col 2015 ruled for plaintiffs

Section (1)(b) of the bill is designed to insure that a requirement for a specific title or file number cannot be the only requirement of an agency for the identification of documents. A "description" of a requested document would be sufficient if it enabled a professional employee of the agency who was familiar with the subject area of the request to locate the record with a reasonable amount of effort.

My October 27, 2017 FOIA request is narrow in scope and only relates to prospective communications between a small set of individuals over a very short period of time. I can't see how this FOIA request should take an inordinate amount of time or research effort—especially since it is easy enough to run a Boolean search of computers using appropriate key words regarding a narrow subject matter.

This October 27, 2017 FOIA was submitted to try to reconcile certain inconsistencies in the Forest Service's explanation about how my September 22, 2017 FOIA was being processed.

To explain, traditionally, when the Forest Supervisor of a National Forest refers a FOIA request for documents to a Regional Forester, a notification is provided by the Forest

Supervisor to the FOIA requester acknowledging the original date of receipt of the FOIA by the Forest Supervisor and supplying the FOIA requester with a Control number that can be used to track the progress of the FOIA going forward—as well as providing an explanation for why the referral is being made.

However, as you are aware, in my case, I neither received any kind of notification from Forest Supervisor Nicholas regarding the referral of my reasonably described September 22, 2017 FOIA nor any advisory of a control number having been assigned to my September 22, 2017 FOIA. Neither did I receive a confirmation of the date of receipt for my September 22, 2017 FOIA.

In fact, it wasn't until November 8, 2017 @ 2:08 pm, that you responded to my prior complaint about the lack of any control number and the inappropriate handling of my September 22, 2017 FOIA. In that November 8, 2017 @ 2:08 pm email, you notified me that my reasonably described September 22, 2017 FOIA had been assigned a control tracking number of 2018-FS-R8-00827-F. I still do not have any correspondence providing the balance of the information normally contained within a referral notice.

To press the issue, in your November 8, 2017 email you also asserted that “We received your [September 22, 2017] FOIA request, October 25, 2017...” You further assert “Your [September 22, 2017] request is currently on hold as we work with you to clarify information needed to proceed with a fee waiver determination. We will continue to process the information you recently submitted via email on 11/6/2017.”

Your assumed characterization of facts set forth in your November 8, 2017 email will also need to be disputed—but I will do so in correspondence separate from this letter.

Returning to my reasonably described FOIA of October 27, 2017, that I tendered to you in your capacity as the Regional FOIA Coordinator on that same date, by my count, allowing for Veterans Day, and Thanksgiving Day, the 20 day period for a response should run on Wednesday, November 29, 2017.

Given this FOIA's extremely narrow subject matter, I can't imagine that there would be more than just a couple of documents that would prove responsive—Hence, I would not expect for there to be any good faith reason for the Forest Service to assert a need to delay responding inside the 20 day deadline.

I would be prejudiced by any asserted need to delay processing this October 27, 2017 FOIA based on some alleged fear of having to produce voluminous documents. Similarly, I would be prejudiced were the Forest Service to demand that I declare my willingness to pay fees before the Forest Service moves forward to process this limited FOIA request.

There is no good faith reason to presume that charges will exceed the de minimis fee exceptions spelled out in Section 3 of 7 C.F.R. Appendix A to Subpart A of Part 1. Alternatively, the Regional Forester has the discretion to grant a fee waiver if necessary.

The information being requested "is in the public interest because it is likely to contribute significantly to public understanding of the operations and activities" of the United States Forest Service in complying with the dictates of the Freedom of Information Act.

The reason why this October 27, 2017 FOIA was reiterated in my November 6, 2017 demand letter to Regional Forest Arney is because I had not received any kind of response regarding my reasonably described FOIA of October 27, 2017. I wanted to prevent my FOIA from being delayed due to some future stated need to delay responding within the 20 working day deadline.

I sincerely hope this clears any confusion, raised in your November 13, 2017 email, about the date of receipt for my October 27, 2017 FOIA. I will be following up with separate correspondence to dispute your asserted understanding of the facts as articulated in your email of November 8, 2017.

With best regards,


Bill Floyd

Cc: Regional Forester Arney
Forest Supervisor Nicholas
Regional Planning Director Gaulke

karney@fs.fed.us
anicholas@fs.fed.us
pgaulke@fs.fed.us

1720 Peachtree Rd., NW, Suite 870S

Atlanta, GA 30309

www.fs.fed.us



Caring for the land and serving people

This electronic message contains information generated by the USDA solely for the intended recipients. Any unauthorized interception of this message or the use or disclosure of the information it contains may violate the law and subject the violator to civil or criminal penalties. If you believe you have received this message in error, please notify the sender and delete the email immediately.

Bill Floyd

From: Meloche, Douglas -FS <dmeloche@fs.fed.us>
Sent: Monday, November 13, 2017 1:17 PM
To: Bill Floyd
Cc: Luczak, Heather L -FS; Milholen, Carol -FS
Subject: New FOIA Request

Mr. Floyd,

I am emailing you to determine if in fact you wish to submit a new Freedom of Information (FOIA) request for the below information or if this is an amendment to your most recent request that is currently on hold? The below paragraph was located on page 17 of the attachment to your email of 11/6/2017.

"I now reiterate that FOIA demand to you—to be provided with any relevant documents including but not limited to emails, internal memoranda, etc. discussing any aspect of the decision to have my September 22, 2017 FOIA processed by Region 8 instead of by the Nantahala National Forest—including any written communications created by you, Peter T. Gaulke, or anyone working within the office and staff of the Chief of the United States Forest Service."

Please let me know as soon as possible. If you have any questions, please contact me at the below number.

Best,
Doug M.



Douglas J. Meloche
Staff Assistant

Forest Service
Law Enforcement & Investigations, Southern Region

p: 404-347-4427

f: 404-347-1849

dmeloche@fs.fed.us

1720 Peachtree Rd., NW, Suite 870S

Atlanta, GA 30309

www.fs.fed.us



Caring for the land and serving people

This electronic message contains information generated by the USDA solely for the intended recipients. Any unauthorized interception of this message or the use or disclosure of the information it contains may violate the law and subject the violator to civil or criminal penalties. If you believe you have received this message in error, please notify the sender and delete the email immediately.

Bill Floyd

From: dmeloche@fs.fed.us
Sent: Wednesday, November 08, 2017 2:08 PM
To: wcbfloyd@ix.netcom.com
Subject: FOIA Request #2018-FS-R8-00827-F

Mr. Floyd -

We received your FOIA request, October 25, 2017, and assigned it the following tracking number, 2018-FS-R8-00827-F. Your request is currently on hold as we work with you to clarify information needed to proceed with a fee waiver determination. We will continue to process the information you recently submitted via email on 11/6/2017.

If you have any questions, please call.

Best,

Douglas Meloche

Southern Region
(404) 347-4427

dmeloche@fs.fed.us

Bill Floyd

From: Bill Floyd <wcbfloyd@ix.netcom.com>
Sent: Monday, November 06, 2017 1:40 PM
To: karney@fs.fed.us
Cc: wcbfloyd@ix.netcom.com; Gaulke, Peter T -FS; anicholas@fs.fed.us; Meloche, Douglas - FS
Subject: Floyd FOIA APPEAL re Request September 22, 2017 re Chattooga River Mismanagement
Attachments: FLOYD FOIA Fee Waiver Request 11062017 Regional Forester FINAL.pdf
Importance: High

Regional Forester Arney,

Please see the attached correspondence entitled “*FLOYD FOIA Fee Waiver 11062017 Regional Forester FINAL.pdf*” detailing my concerns about my inability to obtain a timely response to a request for documents under the Freedom of Information Act (“FOIA”).

The subject FOIA request was first submitted to Forest Supervisor Nicholas, Nantahala and Pisgah National Forests on September 22, 2017.

However, somewhere along the line this FOIA request was taken over by your Regional Planning Staff—although as of right now, I still have neither received any notification of that fact nor been provided with any file tracking number for this FOIA request.

I am seeking your assistance in achieving a resolution without any further delay—although I believe the Forest Service’s failure to have complied with the statutory requirements have already caused the constructive exhaustion of my administrative remedies.

I would ask that you provide an immediate definitive denial or approval of my requested FOIA fee waiver—one way or the other—so that I might proceed with appropriate administrative appeals to the Chief of the Forest Service, etc. This information is important to me and time delay substantially prejudices my ability to use that information and to disseminate to the public at large.

I would also ask you to pay special attention to my concerns about the Forest Service’s acknowledged predetermination to redact any documents that are ultimately produced—even though nobody has laid eyes on the documents to know whether they should be redacted or not. To the extent they are redacted, I am quite certain you will be hearing from me again.

Finally, I must also ask you to pay special attention to an additional FOIA request that was first submitted to your Regional FOIA Coordinator on October 27, 2017—and which I have reiterated for your benefit on page 16-17 of the attached correspondence. This October 27, 2017 FOIA request has to do with closing the gaps on how my September 22nd FOIA got referred at the last moment to Region 8 instead of being processed by the Nantahala National Forest. Most of the information requested would be logically presumed to have been information that the Nantahala would have had in its possession since these requests were isolated to the North Carolina part of the Chattooga.

Thank you for your immediate consideration of my concerns.

With best regards,

Bill Floyd

4110 Quail View Road
Charlotte, NC 28247

November 6, 2017

Re: FOIA APPEAL re Request September 22, 2017 re Chattooga River Mismanagement

VIA EMAIL karney@fs.fed.us

Mr. Ken Arney
Acting Regional Forester
Southern Region (8)
1720 Peachtree Road NW Suite 870S
Atlanta, GA 30309

Dear Acting Regional Forester Arney:

In 2009, President Obama warned of the dangers of government documents and information being withheld from the public “merely because public officials might be embarrassed by disclosure, because errors and failures might be revealed, or because of speculative or abstract fears.”¹

Consequently, Congress amended the Freedom of Information Act (“FOIA”) by passing the *FOIA Improvement Act of 2016*, S 337 (114th) (June 30, 2016). Congress felt this amendment was necessary because: “There is a growing and troubling trend [where Federal agencies are] relying on ... discretionary exemptions to withhold large swaths of Government information, even though no harm would result from disclosure.”²

My FOIA of September 22, 2017 mirrors those concerns articulated by President Obama—it seeks to prevent the United States Forest Service (“USFS or Forest Service”) from using its editorial discretion to forego disclosing embarrassing evidence of its ongoing mismanagement of the special designated uses of the Chattooga’s headwaters in North Carolina—whose waters were designated Outstanding Resource Waters (“ORW”) in 1989 by North Carolina.

This September 22, 2017 FOIA was necessitated because responsible USFS officials (including but not limited to the past and current leadership of the Nantahala National Forest) have demonstrated their *recalcitrant* refusal to consider the merits of my long standing complaint that “creek boating activities are creating point sources where sediments are being channeled into our trout streams—in violation of the current LRMP.”³

¹ *FOIA Improvement Act of 2015*, S. Rep. No. 114-4 at p. 4 (ordered to be published Feb. 23, 2015)

² *FOIA Improvement Act of 2015*, S. Rep. No. 114-4 at p. 3 (ordered to be published Feb. 23, 2015)

³ See the document entitled “*Floyd Notification USFS Nicholas 09222017 FINAL.pdf*” at page 60. This document was attached to an email that was clocked as being sent to Forest Supervisor Nicholas and Ms. Heather Luczak, Forest NEPA Coordinator, National Forests in North Carolina on September 22, 2017 at 3:38 pm.

The Chattooga's headwaters constitute 1 of 3 streams, among 12,000 bodies of water in North Carolina, classified as Class B, Trout, and Outstanding Resource Waters ("ORW") *combined with* a National Wild and Scenic River designation. It was designated ORW in 1989 because of a petition filed by the Rabun County, Georgia Chapter of Trout Unlimited that sought to secure the highest intensity of antidegradation protection for the trout habitat and trout fisheries on these headwaters.⁴

The level of intensity of protection owed to this trout habitat and trout fisheries exceeds any protection owed to the broader aquatic life uses of the Chattooga's ORW water quality.

Preventing any non-temporary degradation of the Chattooga's once *outstanding* trout habitat and its once *outstanding wild* trout fisheries constitute uniquely designated and especially protected uses of the Chattooga's ORW water quality.

Until 2012, the Chattooga was further *uniquely distinguished* because it was also the *single* wild trout stream in North Carolina whose highly erosive soils lying within its fragile 25 foot trout buffer were also being *federally* protected by a regulation (36 CFR 261.77; 43 Fed. Reg. 3693, on January 27, 1978). This federal regulation indirectly protected the trout buffer's highly erosive soils from being displaced and discharged into these ORW waters by enforcing a total prohibition of creek boating⁵ upstream of the Highway 28 Russell bridge.

As the Chief of the Forest Service understood in 1976, some recreational uses are simply physically incompatible with preserving the near natural condition of our most pristine and fragile resources. Unfortunately, today, we have lost sight of that reality with respect to allowing creek boating on every single stream in the country.

The physical evidence in the field irrefutably proves that creek boating does not constitute a recreational use that should be allowed on every stream in the country—and especially not on the narrow and steeply entrenched ORW headwaters of the Chattooga in North Carolina. Allowing creek boating *inescapably necessitates* that paddlers must construct and use an indeterminate

⁴ See 40 C.F.R. §131.12(a)(3)—which North Carolina incorporates by reference in its regulations at 15A NCAC 02B.0201; 15A NCAC 02B.0225(b)(1); *Report of Proceedings For the Proposed Reclassification of ...And Chattooga River In The Little Tennessee River Basin And Savannah River Drainage Area (Macon And Jackson Counties)*, North Carolina Department of Natural Resources And Community Development, Division of Environmental Management, Public Hearings, August 1-4 1988 at page S-8 (the "1988 Report of Proceedings") (originally provided to me by the NC DEQ as "*Chattooga Classification history.pdf*" in November 2015 but otherwise indexed for the USFS administrative record as Floyd document "A-2").

⁵ Creek boating, also called creeking, or steep creeking, or treetop boating, constitutes an extreme and potentially life threatening sport pursued by a select group of the most skilled canoeing or kayaking enthusiasts. Creek boating tends to be more dangerous and extreme than other forms of kayaking and canoeing because it entails making dangerous descents of very steeply entrenched and narrow streams—during high flow events creating class V challenges—often in remote locations where portaging might prove impossible. Creek boating constitutes a relatively young sport that only became possible to pursue after plastic technologies evolved to allow the development of specialized canoes and kayaks that are designed to withstand life threatening failures—such as a boat being broken in two pieces by the forces of water and rock that characterize the whitewater environment in which this sport is pursued.

number of boat launch sites, river evacuation points, and portage trails within the Chattooga's fragile 25 foot trout buffer and extended riparian corridor.

The damaging impacts of constructing and using such recreational infrastructure can neither be avoided nor mitigated on a stream such as the Chattooga's narrow and steeply entrenched headwaters. Specific point sources of pollution are being systematically created within the Chattooga's 25 foot trout buffer where boats are being *seal launched*,⁶ where boats are being evacuated from the river to avoid life threatening stream wide strainer logs, and where portages are being created to enable refloating interesting whitewater features—much like an amusement park.

The physical friction of the bottom of creek boats being forcefully *seal launched* etc., *mechanically creates specific point sources* where these displaced soils and other sources of sediment get channeled into an ORW trout stream—as *if a shovel had been used to dig a ditch. It is functionally analogous to a plow blade being pushed/pulled by a tractor across the trout buffer, to create this creek boating infrastructure.*

The USFS possesses the irrefutable evidence of this creek boater caused problem and yet the USFS *recalcitrantly* refuses to consider the need for greater restrictions on this particular recreational use during the current LRMP planning process for the Nantahala and Pisgah National Forests. In fact, the USFS has responded by suggesting a need to provide even greater accommodation to this single recreational user group instead of less. Furthermore, there is every reason to believe that the Nantahala's forthcoming LRMP will further water down the current LRMP's protections against recreational activities (such as creek boating) that cause visible sediments to be *mechanically* displaced into our fragile trout streams.

To narrow the discussion, my September 22, 2017 FOIA request is entitled to a fee waiver because it seeks to gather information that will shine more light on how the Forest Service has impermissibly promoted the interests of creek boating at the expense of encouraging further impermissible degradation of the already stressed trout habitat and trout fisheries on the Chattooga's headwaters.

Stated differently, by surfacing otherwise undisclosed facts evidencing the Forest Service's neglect in this regard, my continuing use of FOIA serves the “public interest because it [has]... contribute[ed] significantly to the public understanding of the operations or activities of the government.” 5 U.S.C. § 552(a)(4)(A)(iii).

The Forest Service has gotten its priorities mixed up with respect to the Chattooga's headwaters in North Carolina. The USFS has a discrete and nondiscretionary duty to provide the highest intensity of antidegradation protection to the Chattooga's once outstanding trout habitat and once outstanding rainbow, brook, and brown trout fisheries on these North Carolina headwaters.

⁶ During high currents (>350 CFS), a creek boater would experience significant difficulty, and in fact would be normally precluded from putting their boat into this narrow creek before entering its cockpit, because the ripping current would sweep them both away. Instead, by necessity, the paddler must *first* climb into the cockpit of a six foot, forty pound kayak, and then launch the weight of their body and the boat into this narrow creek by propelling the bottom of the boat across the top of the bank while simultaneously using their hands or paddle to accelerate the force of that forward motion. *This constitutes seal launching.*

Unfortunately, instead of discharging this discrete and non-discretionary duty, the Forest Service has demonstrated its preoccupation with catering to the ever expanding demands of creek boating enthusiasts with respect to their use of the Chattooga—even though the United States Court of Appeals for the Fourth Circuit has made clear that paddlers have no special rights to be protected.⁷

I have used FOIA, no less than 17 times since October 2015, to gather information pertinent to demonstrating how the Forest Service has mismanaged the designated uses of the Chattooga's ORW water quality—information that the USFS has otherwise not openly disclosed in any of the environmental assessments prepared to push forward the singular agenda of accommodating the recreational interests of creek boating.

Today, with respect to my long outstanding September 22, 2017 FOIA, the USFS has attempted to claim technicalities to shield its refusal to process my FOIA fee waiver request and the underlying FOIA in a timely fashion—a FOIA whose deadline for receiving a formal *substantive* determination for a fee waiver request, etc. *expired no later than Tuesday, October 24, 2017*.

The significance of information and data collected through no less than 17 prior FOIA requests, dating back to October 2015, have been synthesized in two Notifications dated July 29, 2017 and September 22, 2017 each of which were published to the administrative record being maintained in connection with the rewrite of the Nantahala and Pisgah National Forests Land Resource Management Plan.

As I advised your Regional FOIA Coordinator and Forest Supervisor Nicholas on October 27, 2017, the substantive content of those two Notifications offers more than adequate justification for why my September 22nd FOIA request should be processed without being charged any fees. These Notifications, which have been published to the Forest Service's administrative record, summarize complicated facts and circumstances that the USFS has otherwise declined to disclose and to discuss. These Notifications demonstrate for the broader public how the USFS has knowingly stood by without complying with its obligatory duty to prevent the Chattooga's once outstanding trout habitat and its once outstanding wild trout fisheries from becoming impermissibly degraded by excessive embedded sediments.

These published Notifications inform the public how the Forest Service has knowingly exacerbated this problem by modifying 36 C.F.R. § 261.77 to allow the pursuit of recreational creek boating on these narrow and steeply entrenched headwaters in North Carolina.

On October 27, 2017, in a detailed and formal response to the Regional FOIA Coordinator, I reiterated: “The full context of my Notifications of July 29, 2017 and September 22, 2017

⁷ American Whitewater's litany of claims of deprived legal rights were *ultimately* robustly rejected by the Fourth Circuit Court of Appeals—unfortunately a decade later after the Forest Service had conceded the issue of allowing boating on North Carolina's fragile headwaters. The Court ruled: “We find that the Forest Service reasonably and lawfully identified ‘recreational value’ as the relevant ORV, and that *floating is not a value of the Chattooga that must be protected and enhanced under §1281*.” *American Whitewater et al, v. Tidwell*, 770 F. 3d 1108, 1118 (4th Cir. Ct. App. 2014)(emphasis added).

amplify on why this is true. *Please consider those two separate Notifications as supporting evidence for why a fee waiver is justified.*”⁸

Stated differently, I complied with your staff’s request to provide justification for a FOIA fee waiver by directing them to consider these two Notifications that are already in the possession and lodged within the administrative records of the Nantahala National Forest.

To press further and to dispel any doubts about my desire or capacity for fulfilling the requirements of Section 6 (a)(1)(iii) of Subtitle A, Appendix A to Subpart A of Part 1, Title 7 CFR,⁹ my Notification dated July 29, 2017 has already been published within the electronic public reading room for the Nantahala’s LRMP which is found at <https://cara.ecosystem-management.org/Public/ReadingRoom?Project=43545>.

This constitutes just one specific contemporaneous example of how I have synthesized otherwise unpublished information gathered through FOIA, and disseminated that critical information to an otherwise uninformed public during the LRMP planning process.

Similarly, by publishing my workproduct in the public record, I have made it possible for the general public to learn for itself without having to consume hundreds of hours that I have spent to investigate physical conditions in the field and to prepare and publish synthesized summaries detailing the significance of what I have discovered. The broader public has been provided a way to piggy back on my workproduct to learn about critical issues that the Forest Service has demonstrated an unwillingness to discuss. This refusal to disclose critical but unflattering facts and circumstance must be equated to pursuing an intentional strategy of editorial concealment.

As requested in my detailed correspondence addressed to Regional FOIA Coordinator Meloche and Forest Supervisor Nicholas, dated October 27th, please have your staff review this part of your administrative record to reach a *formal* determination about whether to provide a waiver of fees in connection with my September 22, 2017 FOIA request. I need the Forest Service to cease its pattern and practice of prejudicially delaying its compliance with the procedural regulations pertaining to FOIA requests so that I might exhaust my administrative remedies and move on to obtain the fee waiver and the USFS documents to which the public is entitled to receive.

It remain my contention that: “Any guidelines that the Forest Service chooses to use internally for granting or denying a fee waiver constitute just that—internal guidelines that the Forest

⁸ See page 5 of 7 Floyd correspondence addressed to Mr. Douglas J. Meloche dated October 27, 2017 transmitted by email on Friday, October 27, 2017 @ 4:28 PM (italics in original) as included in Attachment A to this correspondence.

⁹ (1) In determining when fees shall be waived or reduced, agencies should consider the following six factors:

(iii) The contribution to an understanding of the subject by the general public likely to result from disclosure, i.e., whether disclosure of the requested information will contribute to “public understanding”;

See Section 6 (a)(1)(iii) of Subtitle A, Appendix A to Subpart A of Part 1, Title 7 CFR

Service uses at its own risk of being wrong and causing further prejudice and damage to the public's informational rights.”¹⁰

I contend that adequate statutory and regulatory justification for granting a fee waiver can be discerned by your staff simply taking time to review the content of either one of these two lengthy Notifications and associated attachments.

Unfortunately, your staff implies a refusal to review those Notifications or that the information contained within those two Notifications are not sufficient for satisfying the statutory standard spelled out at 5 U.S.C. § 552(a)(4)(A)(iii). I disagree.

On November 1st, without citing any legal foundation, Mr. Meloche summarily asserts “As of now, your FOIA request is not considered perfected.”¹¹

I can't find any definition of “perfection” within either the statute, the Title 7 regulations, or within the document entitled *Fee Waiver Criteria.doc* that Mr. Meloche forwarded to me—a document which Mr. Meloche implies constitute interpretive guidelines for processing fee waiver requests to agencies of the Department of Agriculture.

On November 1st, Mr. Meloche further asserted: “To make a fee waiver determination I need a response addressing the fee waiver criteria/factors. If you do not wish to address the criteria/factors that is your option. However, without the information it is not possible to approve a fee waiver for this request. Please let me know as soon as possible if you do or do not wish to address the fee waiver criteria.”¹²

As objected on October 27, 2017, I disagree with this insistence that a fee waiver determination cannot be evaluated until I robotically comply with instructions to provide my fee waiver justifications in an arbitrarily prescribed format that implicitly disqualifies the format that I have already employed. While the path of least resistance might be to comply with those arbitrary instructions, as you must know, *doing so might prejudice my future administrative rights in any appeal.*

The FOIA statute does not mandate what format of evidence a requester must provide to satisfy the fee waiver standard. It simply states that a fee waiver is appropriate where the information being collected serves the “public interest because it [has]... contribute[ed] significantly to the public understanding of the operations or activities of the government.” 5 U.S.C. § 552(a)(4)(A)(iii).

¹⁰ See page 6 of 7 Floyd correspondence addressed to Mr. Douglas J. Meloche dated October 27, 2017 transmitted by email on Friday, October 27, 2017 @ 4:28 PM.(italics in original) as included in Attachment A to this correspondence.

¹¹ See Email from Mr. Douglas Meloche to Bill Floyd date stamped Wednesday, November 1, 2017 @ 9:05 AM, as included in Attachment A to this correspondence.

¹² Email from Mr. Douglas Meloche to Bill Floyd date stamped Wednesday, November 1, 2017 @ 9:05 AM as included in Attachment A to this correspondence.

Just as important, the statute does not prohibit the requester from justifying a fee waiver request by incorporating by reference *extensive corroborating information* already residing within the administrative records of the United States Forest Service.

These distinctions are not insignificant because the FOIA statute provides the following regarding prospective legal appeals:

“In any action by a requester regarding the waiver of fees under this section, the court shall determine the matter de novo: Provided, That *the court's review of the matter shall be limited to the record before the agency.*” 5 U.S.C. 552(a)(4)(A)(vii)(italics added).

Because any legal appeal of a FOIA fee waiver denial will be limited to the record before the agency, a *requester cannot be limited* in what kinds of information the Forest Service can be asked to review before making its fee waiver determination. It would constitute a violation of due process for the Forest Service to limit the scope of information to which a requester might reference in defending their right to a fee waiver.

In my case, on October 27, 2017, I specifically directed that *all* of the content of my Notification dated July 29, 2017 and its 170 supporting attachments, as well as my Notification dated September 22, 2017, should be incorporated into the record and used to consider granting a fee waiver to my September 22nd FOIA.

Consequently, I fail to comprehend a benign reason why the Forest Service would refuse to provide me with a favorable fee waiver determination—just as it has done no less than 17 times previously with respect to the same subject matter. Without stating why, your staff apparently ignores my request that my fee waiver request be processed by considering all of the facts and circumstance contained within those two Notifications and the 170 attachments previously provided to the administrative record.

Those Notifications contain more than sufficient facts, circumstance, and data to support a judgement ultimately concluding that I am entitled to a fee waiver—but having to go that route will cause great expense and time delay and additional informational injury.

*I would much prefer to work with the USFS to abate the excessive embedded sediment problem that has degraded and which continues to degrade the once outstanding quality of the Chattooga's trout habitat and its once outstanding rainbow, brook, and brown trout fisheries.*¹³ However, the USFS has demonstrated it will not accommodate those overtures because it prefers to continue to provide undeserved special accommodation to the singular interests of whitewater creek boaters—no matter the damage that they do.

¹³ To provide you with some context, I have been fishing the section of the river from Ellicott Rock to the Bull Pen Iron Bridge since the 1980's. I have been fishing the section of river upstream of the Bull Pen Iron Bridge since 2007.

To amplify on my complaint today, the *Fee Waiver Criteria.doc* shared with me by the Regional FOIA Coordinator does not state that a fee waiver determination cannot be processed until I surrender to being *shoehorned* into formatting my request for a fee waiver by providing individual answers to individual questions.

Instead, the guidelines state the UFSS “*will not proceed with the duplication of documents until a determination has been made on your request for a fee waiver or until we receive an indication of your willingness to pay the charges in connection with the request.*”¹⁴

What the guidelines provide is that the USFS won’t make copies until it has made a fee waiver determination—*not that a fee waiver determination can be indefinitely prejudicially postponed until a requester tailors the substantive justifications for their fee waiver request into a procedural format that limits the requesters opportunities to make a subsequent appeal.*

To press the prejudicial inappropriateness of the Forest Service’s refusal to provide a formal determination about my entitlement to a fee waiver, the 20 day clock for receiving a USFS response to my FOIA started to run on September 22, 2017.¹⁵

As previously detailed in my October 27, 2017 response:

On Tuesday, October 17, 2017, having not received an acknowledgment of my FOIA request from the Responsible Official, *I made a good faith effort to advise the Nantahala of the upcoming deadline and to make sure that there wasn’t a problem with my FOIA request.* I telephoned Ms. Ms. Heather Luczak, NEPA Coordinator, National Forests in North Carolina to ask her about the pending

¹⁴ See the document entitled *Fee Waiver Criteria.doc* provided to me as an attachment to Mr. Meloche’s email of October 25, 2017 as included in Attachment A to this correspondence.

¹⁵ See 7 C.F.R §1.7 *Agency response to request for records*: “5 U.S.C. 552(a)(6)(A)(i) provides that each agency of the Department to which a request for records is submitted in accordance with § 1.5(a) shall inform the requester of its determination concerning that request within 20 working days of its date of receipt (excepting Saturdays, Sundays, and legal public holidays), plus any extension authorized under § 1.16. If the agency determines to grant the request, it shall inform the requester of any conditions surrounding the granting of the request (e.g., payment of fees) and the approximate date upon which the agency will provide the requested records. If the agency grants only a portion of the request, it shall treat the portion not granted as a denial, and make a reasonable effort to estimate the volume of the records denied and provide this estimate to the requester, unless providing such an estimate would harm an interest protected by an exemption of the FOIA. If the agency determines to deny the request in part or in whole, it shall immediately inform the requester of that decision and provide the following:

- (1) The reasons for the denial;
- (2) The name and title or position of each person responsible for denial of the request;
- (3) The requester's right to appeal such denial and the title and address of the official to whom such appeal is to be addressed; and
- (4) The requirement that such appeal be made within 45 days of the date of the denial.

status of my FOIA and to alert her and Forest Supervisor Nicholas about the upcoming deadline for a response to my FOIA.

Ms. Luczak professed a lack of time to discuss my FOIA but stated that the Nantahala was working on sending me some documents—but that the Nantahala was also concerned about the large number of documents that might need to be produced. This comment surprised me.

Despite the Forest Service already having had 18 working days to comply with my FOIA, Ms. Luczak did not warn me of my inadvertent failure to have made a specific fee waiver request in that September 22, 2017 FOIA request—which I admit was presumed based on the prior experience of having submitted no less than 17 other FOIA requests since October 2015. Given Ms. Luczak’s self professed time constraints, she did not discuss any specific problems with my FOIA. I offered Ms. Luczak the convenience of returning my call later in the day or as soon as her schedule might permit. I provided her with the following telephone number 704 542 7726.

On that same morning at 11:33 am, I followed up by emailing the Responsible Official, Forest Supervisor Nicholas, to try to avoid any delays in having my FOIA promptly processed.¹⁶

Given Ms. Luczak’s passing comment about the possible difficulties of the Forest Service having to transmit a large number of documents, I specifically cautioned the Forest Service about “dump[ing] numerous documents on me *if they are not narrowly connected* to the subject matter.” (italics added). I offered this cautionary statement to prevent the Forest Service from producing a “kitchen sink” type response.

I did not expect and I still do not expect that there will be a “voluminous” number of *relevant* documents that would fit the narrowly defined nature of my request. This email closed with the following: “Please do not hesitate to contact me if needed. I believe the FOIA deadline runs this week.”

Despite my good faith attempt on October 17 to address any open questions about my FOIA request, it wasn’t until ...Friday, October 20, 2017 @10:18 am that I received the following terse statement from Ms. Heather Luczak, Forest NEPA Coordinator: “ I apologize for not getting back to you yesterday. *I would like to discuss refining your requests* in your FOIA. Please let me know what number I can reach you at.” (italics added).

Because I would be traveling that day in heavy Friday afternoon traffic, I responded at 2:56 pm as follows: “I am traveling with limited windows...If you would like, just send me your questions or suggestions by email and I can try to respond over the weekend.”

¹⁶ See email clocked October 17, 2017 @ 11:33 AM from Bill Floyd to Forest Supervisor Hurston A. Nicholas as included in Attachment A to this correspondence.

The deadline for FOIA compliance expired on [Monday, October 23, 2017 ¹⁷]. The fact is the Nantahala National Forest waited until the proverbial last moment to try to create a basis for tolling the 20 day deadline—despite my good faith efforts to avoid any delays in processing my FOIA.

Furthermore, it wasn't until Monday, October 23, 2017 @ 9:31 pm, long after the close of business, that I received a specific request from Ms. Luczak asserting the Forest Service's need for specific clarification regarding my request #6 and a passing comment about her "understanding that there may be some fees associated with the response to this FOIA request."

The issue of the absence of a fee waiver request was never raised during our brief telephone conversation of October 17, 2017,

On October 24, 2017 at 1:52 am, I responded *specifically* to Ms. Luczak's request for clarification regarding my request item #6, by emailing a response to Forest Supervisor Nicholas and Ms. Luczak. I also tendered the following clarification about my request for a fee waiver: "Regarding Ms. Luczak's comment set forth below regarding the possibility of assessing fees in responding to my September 22, 2017 FOIA, *any and all fees should be waived* because my request seeks 'disclosure of...information [which] is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and not primarily in the commercial interest of the requester.'" ¹⁸

In other words, on October 24, 2017 at one o'clock in the morning, and within four hours of reading Ms. Luczak's *late breaking* request for clarification, I responded to all of the issues that Ms. Luczak had identified might conceivably delay the processing of my FOIA request.

To repeat, it wasn't until Monday, October 23, 2017 @ 9:31 pm, long after the close of business, that I received a specific request from Ms. Luczak asserting the Forest Service's need for specific clarification regarding my request #6 and a passing and non-specific comment about her "understanding that there may be some fees associated with the response to this FOIA request". The circumstances of this factual timeline, in combination with the Forest Service's prior demonstrated pattern and practice of less than promptly and fully handling my requests for information, raises serious concern that the USFS was looking for a pretense to apply the tolling of the statute to cause delay.

Again, it is probative that I voluntarily reached out to the USFS on October 17th, prior to the deadline, to try to ascertain if there were problems with my FOIA request that had been submitted way back on September 22, 2017. Nevertheless, the Forest Service waited

¹⁷ My October 27, 2017 correspondence contained a clerical error by citing Friday, October 20 as the end of the 20 day period commencing on September 22, 2017.

¹⁸ See pages 3-4 of Floyd correspondence addressed to Mr. Douglas J. Meloche dated October 27, 2017 transmitted by email on Friday, October 27, 2017 @ 4:28 PM.(italics in original) as included in Attachment A to this correspondence.

until Monday, October 23, 2017 at 9:31 pm in the evening to advise me of a need to provide additional information.

In any case, a final determination on my fee waiver request was owed no later than October 24, 2017 which constitutes the date when I supplemented my FOIA request by fully responding to the two outstanding issues that were tendered by Ms. Luczak on October 23, 2017. See the tolling provisions spelled out in 5 U.S.C. 552(a)(6)(A)(i) and 7 CFR §1.7(a), and 7 CFR §1.5.

As the FOIA statute states:

“...The 20-day period shall not be tolled by the agency except—

(I) that the agency may make one request to the requester for information and toll the 20-day period while it is awaiting such information that it has reasonably requested from the requester under this section; or

(II) if necessary to clarify with the requester issues regarding fee assessment. In either case, the agency’s receipt of the requester’s response to the agency’s request for information or clarification ends the tolling period.”

5 USC §552(6)(A)(ii) (*italics added for emphasis*).

On October 24, 2017, I answered Ms. Luczak’s questions. This ended the statutory tolling period allowing the deadline for a response to expire on October 24, 2017. The USFS should have provided a response to my fee waiver request but it refused to do so.

Given that the Forest Service had waived any fees associated with producing responses to 17 prior FOIA requests pertaining to the same subject matter, the Forest Service cannot in good faith proclaim now that it needed more time or more information to evaluate my request for a fee waiver. The September 22, 2017 FOIA pertains to the same subject matter as each of those 17 prior FOIA requests.

To press further, no later than September 22, 2017, the Forest Service was in possession of a large part of my substantive justifications for seeking a fee waiver in connection with my FOIA request of September 22, 2017. This consisted of my Notification of July 29, 2017 and its 170 attachments, as well as my Notification of September 22, 2017.

But the Nantahala National Forest did not offer a fee waiver determination on October 24, 2017. In fact, the Nantahala National Forest failed to provide any form of written acknowledgement or even to assign a file number to my FOIA request of September 22, 2017. Neither did the Nantahala National Forest provide me with any form of written notification that my FOIA had been referred to Region 8. As of the date of this letter, I have never received any explanation from the Forest Supervisor why my request for a FOIA fee waiver was not processed within the applicable deadlines by the Nantahala National Forest.

There is one other way that the Forest Service might have tried to justify delaying a response to my request for a fee waiver within the statutorily fixed 20 day deadline.

“(B)(i) In unusual circumstances..., the time limits prescribed in either [5 USC §552(6)(A)(ii) or (ii)] may be extended by [the agency providing] written notice... setting forth the unusual circumstances for such extension and the date on which a determination is expected to be dispatched. No such notice shall specify a date that would result in an extension for more than ten working days, except as provided in clause (ii) of this subparagraph.

(ii) With respect to a request for which a written notice under clause [5 USC §552(a)(6)(B)](i) extends the time limits prescribed under clause (i) of subparagraph (A) [5 USC §552(a)(6)(A)(i)], the agency shall notify the person making the request if the request cannot be processed within the time limit specified in that clause and shall provide the person an opportunity to limit the scope of the request so that it may be processed within that time limit or an opportunity to arrange with the agency an alternative time frame for processing the request or a modified request. ... Refusal by the person to reasonably modify the request or arrange such an alternative time frame shall be considered as a factor in determining whether exceptional circumstances exist for purposes of subparagraph [5 USC §552(a)(6)(C)].

(iii) As used in this subparagraph, "*unusual circumstances*" means, but only to the extent reasonably necessary to the proper processing of the particular requests—

(I) the need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request;

(II) the need to search for, collect, and appropriately examine a *voluminous* amount of separate and distinct records which are demanded in a single request; or

(III) the need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request or among two or more components of the agency having substantial subject-matter interest therein.

5 U.S.C. §552(a)(6)(B)(i) through (iii) (*italics added*).

This exception should not apply. When the 20 day administrative deadline expired on Monday, October 23, 2017, or at the latest on Tuesday, October 24, 2017, the USFS lacked any concrete factual basis *to speculate* that my request would require the production of "*voluminous*" records.

By its own admission, the Forest Service had not begun to process my FOIA request at that point in time. Hence, there would have been no good faith foundation for the Forest Service to have speculated that my request would require the Forest Service to produce a *voluminous* number of documents. In fact, one of the reasons for my FOIA request was to demonstrate the entire absence of any documents pertaining to items 2, 3, 4, 5, and 6 of that FOIA. The subsequent production of a *voluminous* number of documents pertaining to sedimentation studies (item #2 of my FOIA), studies inventorying creek boater caused displacement of soils lying inside the trout buffer, (item #3 of my FOIA), and back and forth emails, etc. between American Whitewater and USFS officials (item#6 of my FOIA) would substantiate other allegations challenging the inadequacy of the Forest Service's efforts to deliver the highest intensity of antidegradation protection to the Chattooga's once outstanding trout habitat and its once outstanding and naturally reproducing rainbow, brook, and brown trout fisheries.

Most remarkably, prior to the 20 day deadline passing, the USFS never argued *in writing* that the statute should be tolled because of some concern about the need to produce a “*voluminous*” number of documents.

As detailed for the Regional FOIA Coordinator on October 27, 2017, after speaking *briefly by telephone* with Ms. Luczak on Tuesday, October 17, 2017, I became concerned that the Forest Service might dump a multitude of irrelevant documents on me in response to my narrowly drawn FOIA request. Were the Forest Service to provide an all but the kitchen sink type response, this would *prejudicially* compel me to consume my limited time to look for a needle in a haystack—which I doubt is what FOIA intends.

Given my concern about obfuscation occurring as a consequence of being potentially provided with an everything but the kitchen sink type response, I contemporaneously penned an email to Forest Supervisor Nicholas and Ms. Luczak on Tuesday, October 17 @ 11:33 am. In that email, I warned that “it serves no constructive purpose for the Forest Service to use its time to dump numerous documents on me if they are not narrowly connected to the subject matter.”¹⁹

I also differentiated between my request for documents under FOIA and several other questions for which answers were owed pursuant to my *public participation* rights associated with the preparation of the Nantahala’s soon to be revised Land Resource Management Plan.

On Friday, October 20, 2017, Ms. Luczak submitted the following terse email: “I apologize for not getting back to you yesterday. I would like to discuss refining your requests in your FOIA. Please let me know what number I can reach you at.”²⁰

To clarify, Ms. Luczak had already been extended the courtesy of a phone number when we spoke briefly by phone on October 17, 2017.

Because I would be traveling that day in heavy Friday afternoon traffic, I responded at 2:56 pm as follows: “I am traveling with limited windows...If you would like, just send me your questions or suggestions by email and I can try to respond over the weekend.”

Ms. Luczak did not accept my invitation to do so. Instead Ms. Luczak waited until 9:31 pm on Monday, October 23rd to detail just 2 specific concerns about my FOIA.

Ms. Luczak merely inquired in writing: “Are you looking for direct communications between the FS and American Whitewater or all public meetings and notifications that included American Whitewater on the mailing list? It would help to narrow the scope of item 6 as this covers five years’ worth of communications with the public.”

Within four hours of receiving Ms. Luczak’s communication, I prepared a response to her request. I submitted that response in an email clocked Tuesday, October 24, 2017 at 1:52 am.

¹⁹ See email clocked October 17, 2017 @ 11:33 AM from Bill Floyd to Hurston A. Nicholas attached here as Appendix A.

²⁰ See Luczak email to Floyd clocked Friday, October 20, 2017 at 10:18 am attached here as a part of Appendix A.

- 1) Regarding Ms. Luczak’s comment set forth below regarding the possibility of assessing fees in responding to my September 22, 2017 FOIA, *any and all fees should be waived* because my request seeks “disclosure of ... information [which] 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.”
- 2) ...
- 3) With respect to your request for clarification regarding “item 6” in my September 22, 2017 FOIA, the intention of the request is to capture individual communications. However, as you know American Whitewater has been given special access as a member of the Stakeholders Forum For the Nantahala and Pisgah LRMP Plan Revision. Consequently, the response should also include any communications back and forth between American Whitewater and the National Forest Foundation.²¹

Consequently, any tolling of the statute, that might have theoretically occurred as a consequence of Ms. Luczak’s tardily transmitted Monday, October 23, 2017 email, came to an end on October 24, 2017 when I transmitted my response. Also, the Nantahala had *legally authorized discretion* to provide a fee waiver to me on that date even though I had inadvertently not included a specific request for one in my September 22, 2017 FOIA. See Section 6(a)(2) of Appendix A to Subpart A of Part 1, Title 7 Code of Federal Regulations.

In her October 23, 2017 email, Ms. Luczak never stated that the USFS was seeking to use the *“unusual circumstances”* provision to excuse its noncompliance with the 20 day deadline—which the Forest Service is required to do in writing. The USFS never *explicitly* asked me to modify my FOIA request. Hence, this statutory *“unusual circumstances”* provision should not excuse the Forest Service from failing to comply with the statutory 20 day deadline for providing a response to my request for a fee waiver and a definitive acknowledgement of its intention to process my request expeditiously.

Any concerns about the possible burdens of producing *“voluminous”* records did not appear until the Regional FOIA Coordinator alluded to that potential excuse in an email clocked on October 26, 2017 at 10:30 am—which was after the deadline for a response had expired on October 24, 2017.

Nevertheless, the USFS has refused to make a fee waiver determination based on the allegation that I have not provided enough information for my fee waiver request to be processed. The truth is, the Forest Service has been in possession of the substantive information that it needs to make a fee waiver determination—since September 22, 2017.

To amplify, the Regional FOIA Coordinator has emailed to notify me that the Forest Service will not process my FOIA fee waiver request until certain information formatting demands are

²¹ Floyd email to Forest Supervisor Nicholas and Ms. Luczak, Forest NEPA Coordinator, National Forests in North Carolina clocked at October 24, 2017 @ 1:52 am included in Attachment A to this correspondence.

satisfied. These statements offer self-proving admissions that the USFS has not *quantified the number documents* that would prove responsive to my FOIA request.

Therefore, on October 26, 2017, it was arbitrary for the Regional FOIA Coordinator to assert an entirely *speculative burden* of having to produce “*voluminous*” records as an excuse for refusing to comply with the 20 day statutory deadline for providing a response to my FOIA.

Neither the Responsible Official for the Nantahala and Pisgah National Forests—which would have been Forest Supervisor Nicholas—nor any his staff members claimed such a need to toll the statutory deadline of 20 days.

The FOIA statute is clear about what the consequences are of non-compliance with this particular 20 day deadline.

“Any person making a request ...for records under paragraph (1), (2), or (3) of this subsection *shall be deemed to have exhausted his administrative remedies ...if the agency fails to comply with the applicable time limit provisions...* If the Government can show exceptional circumstances exist and that the agency is exercising due diligence in responding to the request, the court may ...allow the agency additional time to complete its review of the records... 5 USC §552(6)(C)(i)(italics added)

Given these particular facts, there is little room for the Forest Service to assert a benign purpose or entitlement for tolling these statutory deadlines.²²

²² § 1.16 Extension of administrative deadlines.

(a) In unusual circumstances as specified in this section, when additional time is needed to respond to the initial request or to an appeal, agencies shall acknowledge the request or the appeal in writing within the 20 working day time period, describe the unusual circumstances requiring the delay, and indicate the anticipated date for a substantive response that may not exceed 10 additional working days, except as provided in the following:

(1) In instances in which the agency, with respect to a particular request, has extended the response date by 10 additional working days, if the agency finds that it cannot make a response determination within the additional 10 working day period, the agency shall notify the requester and provide the requester an opportunity to limit the scope of the request to allow the agency to process the request within the extended time limit, or an alternative time frame for processing the request or a modified request.

(2) If the requester refuses to reasonably modify the request or arrange for an alternative time frame for processing the request, the FOIA provides that such refusal shall be considered as a factor in determining whether there are exceptional circumstances that warrant granting additional time for the agency to complete its review of the records, as set forth in 5 U.S.C. 552(a)(6)(C)(iii). The term “exceptional circumstances” does not include a delay that results from a predictable agency backlog, unless the agency demonstrates reasonable progress in reducing its backlog of pending requests.

(b) As used in this section, “unusual circumstances” that may justify delay are:

(1) The need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request;

The most recent efforts to hinder and to delay my use of FOIA for advancing the public interest is remarkably eye-opening because: “An agency may, in its discretion, waive or reduce fees associated with a request for disclosure, *regardless of whether a waiver or reduction has been requested*, if the agency determines that disclosure will primarily benefit the general public.” Section 6(a)(2) of Appendix A to Subpart A of Part 1 of Title 7 (italics added).

Instead of using this discretion to waive any fees pertaining to the current FOIA request just like the USFS has done with no less than 17 prior FOIA requests, the USFS now attempts literally at the last moment to come up with a technical reason to toll the 20 day deadline for responding to my September 22, 2017 FOIA. Whether intentional or accidental, by ignoring the prior history of my FOIA requests, this sudden retreat to a highly technical interpretation of its FOIA obligations implies that the Forest Service seeks to muddy the waters regarding my *immediate* right to assert the *constructive exhaustion* of my administrative remedies per 5 USC §6(C)(i).

The Nantahala’s Forest Supervisor should be well aware of the substantive merit of the issues and concerns about which I campaign and the fact that my prior FOIA requests were processed without any questions about my entitlement to a fee waiver. Furthermore, the Forest Supervisor should have known that the Nantahala’s administrative record at the time of my September 22, 2017 FOIA request contained more than sufficient information for him to make a favorable fee waiver determination pertaining to the September 22nd FOIA without requiring anything more. The truth is the Nantahala’s Forest Supervisor had the authority to waive any fees but my request was apparently referred to Region 8—for curious reasons—and without me having ever been provided with written notification of proper FOIA tracking information etc.

There is a need to investigate the confusion about how and why my September 22, 2017 FOIA got referred to the Southern Region for processing. In my correspondence dated October 27, 2017, I asked Mr. Meloche to answer the following question:

(2) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or

(3) The need for consultation, which shall be conducted with all practicable speed, with another Department or agency having a substantial interest in the determination of the request or among two or more components of agency having substantial subject-matter interest in the request.

Note to paragraph (b):

Consultation regarding policy or legal issues between an agency and the Office of the General Counsel, Office of Communications, or the Department of Justice is not a basis for extension under this section.

(c) The 10-day extension authorized by this section may be divided between the initial and appellate reviews, but in no event shall the total extension exceed 10 working days.

(d) Nothing in this section shall preclude the agency and the requester from agreeing to an extension of time. Any such agreement should be confirmed in writing and should specify clearly the total time agreed upon.

[65 FR 46340, July 28, 2000]

“Was the referral of my FOIA to Region 8 compelled by an order from the Regional Forester or was the referral voluntarily initiated by Forest Supervisor Nicholas and his staff?”

In that correspondence I also advised Mr. Meloche “To the extent there are relevant documents relating to this question, please provide them to me under the Freedom of Information Act.”

Mr. Meloche answered “Your FOIA request was transferred to me by the forest staff and the Regional Planning Director [Peter T. Gaulke] who has the overall responsibility to manage the Southern Region’s FOIA Program.”

However, Mr. Meloche *did not respond* to my stated FOIA request to be provided with any documents, which would include emails, memos, etc., discussing the reasons for the referral of my FOIA request up to the Regional Planning Director and Regional FOIA Coordinator.

I now reiterate that FOIA demand to you—to be provided with any relevant documents including but not limited to emails, internal memoranda, etc. discussing any aspect of the decision to have my September 22, 2017 FOIA processed by Region 8 instead of by the Nantahala National Forest—including any written communications created by you, Peter T. Gaulke, or anyone working within the office and staff of the Chief of the United States Forest Service.

The fact that technical arguments are being used today to delay providing a prompt response for my request for a fee waiver raises concern that the position being taken reflects an organizational antagonism towards my prior efforts to surface embarrassing facts that demonstrate how the USFS has allowed the once outstanding trout habitat and outstanding trout fisheries to become degraded by excessive amounts of embedded sediments.

To press this specific concern, my July 29, 2017 Notification to Forest Supervisor Nicholas²³ provided seven specific examples how the United States Forest Service has repeatedly engaged in a pattern and practice of neglecting to disclose critical factual information, and of providing piecemeal responses to requests for information. Significantly, when synthesized with other undisclosed facts, the picture that emerges in one revealing the Forest Service’s longstanding mismanagement and neglect of the Chattooga River’s trout habitat and trout fisheries in North Carolina.

Stated differently, for an extended period of time reaching back to the fall of 2015, using a series of FOIA requests, and for the benefit of the public’s right to know, I have slowly forced the United States Forest Service to surface dispositive but otherwise not voluntarily disclosed facts and data. These facts and data evidence how the USFS—dating back as far as 2004—has neglectfully mismanaged the Outstanding Resource Waters (“ORW”) of the Chattooga’s headwaters in North Carolina. More precisely, the information collected through those prior FOIA requests reveal how the USFS has ignored its discrete and non-discretionary duty to provide these headwaters with the highest intensity of protection against any non-temporary degradation of the Chattooga’s once outstanding quality of trout habitat and once outstanding wild trout fisheries (rainbow, brook, and brown).

²³ Transmitted as an attachment to an email on Saturday, July 29, 2017 @ 9:44 am to Forest Supervisor Nicholas as document entitled “*Floyd Notification USFS Nicholas 07292017 FINAL.pdf*”.

In addition, my ongoing use of FOIA has surfaced evidence showing how this mismanagement commenced as far back as 2004.

In 2004, the USFS orchestrated what equated to a sub rosa administrative appeal while awarding undeserved relief to American Whitewater's appeal of 36 CFR 261.77. This administrative appeal was sub rosa because the Forest Service failed to provide a critically important group of North Carolinians holding protectable interests with appropriate notice and the opportunity to be heard at the most meaningful time and in the most meaningful manner.

Stated differently, this group of individuals were kept in the dark in 2004 and deprived of their procedural due process rights through the sub rosa actions of the United States Forest Service. This deprivation had the causal effect of preventing this group from challenging American Whitewater's lack of basic Article III standing to ask, much less demand, that the USFS invalidate 36 CFR 261.77.

This neglect was further aggravated when the Regional Forester failed to intervene to defend the rights of those not given the opportunity to appear. *Stated differently, this highly prejudicial refusal to intervene and contest American Whitewater's asserted factual claims and legal interpretation effectively guaranteed that American Whitewater's appeal proceeded uncontested to reach a decision that favored whitewater creek boaters—even though they would not have been able to compel a court to consider their complaint because of a lack of Article III standing.*

In 2004, this ascertainable group of due process deprived individuals would have had no practical way to recognize how this orchestrated sub rosa administrative process had deprived them of their due process rights.

All of this otherwise undisclosed fact and circumstance has only recently been uncovered as a part of the glacier moving use of the Freedom of Information Act to uncover information that has been buried in order to avoid revealing the inappropriateness and shortcutting that took place.

Neither the FOIA statute, the regulations set forth at Section 6 of Appendix A to Subpart A of Part 1 of Title 7 CFR, nor the guidelines *compel me to act* as Mr. Meloche suggests.

First of all, the FOIA statute provides:

Documents shall be furnished without any charge or at a charge reduced below the fees established under clause (ii) if disclosure of the information 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.

5 U.S.C. 552(a)(4)(A)(iii).

"A requester seeking a fee waiver *bears the initial burden of identifying the public interest* to be served," and that public interest must be asserted with reasonable specificity. *Southeastern Legal Foundation v. US ENVTL. PROT.*, 181 F. Supp. 3d 1063, 1073-1074 (N.Dst. Ga 2016)(citing

National Treasury Employees Union v. Griffin, 811 F.2d 644, 647 (D.C.Cir.1987); *Larson v. CIA*, 843 F.2d 1481, 1483 (D.C.Cir.1988) (per curiam))(italics added).

My two Notifications dated July 29, 2017 and September 22, 2017 satisfy that initial burden of *identifying the public interest served with reasonable specificity*.

Among other things, these Notifications serve the public interest by populating the Nantahala's administrative record with facts and data pertaining to the Chattooga's trout habitat and trout fisheries not otherwise revealed by the Forest Service.

These Notifications demonstrate the pressing need to address the Chattooga's problem of excessive embedded sediment in the forthcoming Land Resource Management Plan ("LRMP").

The revealing content of both of these Notification's was derived from using data and information brought to the surface by multiple FOIA requests.

The Notification dated July 29, 2017 contained 127 pages of factual information, complaint, and recommendations. Much of what was summarized in this Notification was built upon documents previously collected through FOIA requests. This Notification was supported by 170 attachments—many of which consisted of third party prepared documents.

Among other things this Notification dated July 29, 2017 was published in order to allow other citizens to see for themselves show how the USFS *has engaged in a pattern and practice of*: (a) ignoring the *public participation* mandate of the 2012 Planning Rule by providing less than full and complete answers to LRMP related questions; (b) delaying responses to questions that seek to reveal how the Aquatic Systems component of the LRMP does not provide the required intensity of antidegradation protection mandated for the Chattooga's trout habitat and trout fisheries; (c) *refusing to publish reports detailing the historic baseline condition of the Chattooga's trout populations in 1992-1996 as jointly studied by the USFS and the North Carolina Wildlife Resources Commission ("NCWRC")*; (d) forcing the public to resort to the less efficient Freedom of Information Act ("FOIA") to document the administrative record with facts showing how the USFS has not protected the specially designated uses of the Chattooga's ORW water quality; (e) conducting inadequate and incomplete FOIA searches even when told what information is being sought using the contents of such documents; (f) forcing an interested member of the public to suffer the delay of filing multiple appeals to the Chief of the United States Forest Service to compel the production of additional germane documents not produced within the initial FOIA deadlines;

The follow up "Floyd September 22, 2017 Notification of Supervisor Nicholas" contained 62 pages of factual information, complaint, and recommendations. My cover email specifically advised Forest Supervisor Nicholas "Because of certain unsupported assertions made to me in the September 6, 2017 interpretive ruling, I find it necessary to incorporate a Freedom of Information Act request which is found on page 61 of this Notification."

This Notification dated September 22, 2017 summarizes previously undisclosed factual information gathered through FOIA to offer specific complaints, recommendations and demands pertaining to the Forest Service's continuing mismanagement of the once outstanding trout habitat and once outstanding trout fisheries on the Chattooga's headwaters in North Carolina.

Among other things, this Notification detailed the Forest Service’s refusal to apply the best available science to monitor and to recognize the need to fix the non-temporary problems of degrading trout habitat and degrading trout fisheries—occurring due to excessive embedded sedimentation.

There is reason to be concerned that the processing of my FOIA is being delayed “merely because public officials might be embarrassed by disclosure, because errors and failures might be revealed, or because of speculative or abstract fears.”²⁴ This concern follows from how differently this FOIA request is being processed in comparison to my 17 prior FOIA requests—all of which were approved for fee waivers. There is also reason to be concerned because I have synthesized the information gathered under FOIA to publish documents which demonstrate for the public how the Forest Service has been mismanaging the Chattooga’s headwaters in North Carolina.

The North Carolina reach of the Chattooga River was designated Outstanding Resource Waters (“ORW”) in 1989 based on a petition brought by the Rabun County Georgia Chapter of Trout Unlimited. The state of North Carolina responded by specifically granting ORW status to the Chattooga’s headwaters in order to provide the highest intensity of protection to the stream’s outstanding trout habitat and outstanding naturally reproducing rainbow, brook, and brown trout fisheries. Unfortunately, the United States Forest Service has ignored its obligation to prevent any non-temporary degradation of the Chattooga’s trout habitat and trout fisheries.

My current September 22, 2017 FOIA request continues the process of seeking information that further reveals for the public’s understanding how the Chattooga’s trout habitat and trout fisheries came to be neglected as well as why this neglect continues to occur even now.

Because of the Forest Service’s demonstrated indifference towards my past requests seeking information about the neglect of this trout habitat and trout fisheries, and the due process disadvantages of limiting the scope of information used to support a fee waiver request, your staff must make a decision on my fee waiver request based on the information that I have already provided—which includes the July 29, 2017 Notification and its 170 attachments, as well as the contents of my September 22, 2017 Notification.

Given that the current FOIA request was actually embedded within the September 22, 2017 Notification, my request for a fee waiver could have been *fully evaluated* based on the content of what had just been contemporaneously placed into the Nantahala’s administrative record for the current LRMP planning process—and should have been approved based on the discretion granted to the USFS by Section 6(a)(2) of Appendix A to Subpart A of Part I, Title 7 Code of Federal Regulations.

In fact, the Forest Supervisor for the Nantahala National Forest and his staff were in possession of all of this relevant documentation for the entire 20 days before the Nantahala attempted to toll the statute’s 20 day deadline for responding.

²⁴ *FOIA Improvement Act of 2015*, S. Rep. No. 114-4 at p. 4 (ordered to be published Feb. 23, 2015)

In studying the content of my September 22, 2017 Notification, Forest Supervisor Nicholas should have been able to recognize the continuing appropriateness of granting a fee waiver for this FOIA request just as fee waivers were granted 17 times in the past.

Your Regional FOIA Coordinator now asserts that “To make a fee waiver determination I need a response addressing the fee waiver criteria/factors. If you do not wish to address the criteria/factors that is your option. However, without the information it is not possible to approve a fee waiver for this request.”²⁵

Similarly, the regional staff now implies that I am somehow prohibited from asserting my two Notifications as supporting information for my fee waiver request. Instead the regional staff claims that I must mechanically provide a written response to each one of the six factors that are to be considered by the USFS in evaluating a fee waiver request. Nonsense.

To press why I am not required to do as the Forest Service asserts, Section 6(a)(1) of Appendix A to Subpart A of Part 1 of Title 7 provides: “In determining when fees shall be waived or reduced, *agencies should consider the following six factors.*” (italics added).

The regulation *does not specify* that a requester must address each of these six criteria by providing a written explanation detailing how each standard can be satisfied. Instead the regulation is clear that the burden for deciding whether or not the requester qualifies for a fee waiver belongs to the Forest Service: “*agencies should consider the following six factors.*” Id.

While a requester might want to provide supporting information to sustain a request, there is no specific format in which that supporting documentation must be submitted.

As noted previously, there are due process concerns associated with the position being asserted by the Regional FOIA Coordinator.

The Forest Service’s refusal to issue an approval of my request for fee waiver, unless I fit my evidence of entitlement into an arbitrary format, provides further evidence of the Forest Service’s potential bad faith motives. There is reason to be concerned that the USFS has been engaging in a pattern and practice of neglecting to disclose critical factual information, and of providing piecemeal responses to requests for information to stifle and thwart attempts to gather information that might reveal the Forest Service’s mismanagement of the Chattooga River’s trout habitat and trout fisheries in North Carolina.

This September 22, 2017 FOIA request is critically important because the Forest Service has *repeatedly denied* my requests that the creek boating caused damages occurring on the Chattooga’s headwaters be reevaluated during the current Nantahala LRMP planning process.

“...*The Forest has publically stated that we will not be revisiting the management direction for the Chattooga River as part of this plan revision.* The revised forest plan for the Nantahala and Pisgah NFs will include management direction for the Chattooga River consistent with

²⁵ Email from Mr. Douglas Meloche to Bill Floyd date stamped Wednesday, November 1, 2017 @ 9:05 AM.

Amendment 22 ([Chattooga Wild and Scenic River](#)) and will include forestwide direction to protect and maintain water quality as well as provide protection for the outstandingly remarkable values of all designated Wild and Scenic Rivers on the Nantahala and Pisgah NFs. *Any updates to the management of the Chattooga River will not be considered until after the plan revision, in subsequent analysis, and after several years of monitoring data is available to inform that analysis.*"²⁶

The tone of insistence contained within this statement constitutes evidence that it embodies the final decision and intention of the responsible USFS officials to make this position the *working law* regarding the management of the Chattooga River.

When challenged a second time about this stated position, Forest Supervisor Nicholas of the Nantahala and Pisgah National Forests corroborated that "any updates to the Amendment 22 language regarding specific management of the Chattooga River will not be considered as part of a plan revision." See Forest Supervisor Nicholas' email to Bill Floyd clocked Tuesday, October 24, 2017 @ 10:04 am included in Attachment A to this correspondence.

Consequently, such repetitive statements constitute self-proving admissions of a final decision reached by the Nantahala National Forest and the United States Forest Service. Hence, the deliberative process privilege associated with Exemption 5 of the Freedom of Information Act should neither shield documents that discuss the application of this *working law* nor the execution of a policy that has been "adopted, formally or informally, as the agency position on an issue or is used by the agency in its dealings with the public." *Coastal States Gas Corporation v Department of Energy*, 617 F.2d 854, 866 (D.C. Cir.1980). In *Coastal States*, the D.C. Circuit also stated:

A strong theme of our opinions has been that an agency will not be permitted to develop a body of "secret law," used by it in the discharge of its regulatory duties and in its dealings with the public, but hidden behind a veil of privilege because it is not designated as "formal," "binding," or "final." 617 F. 2d 854, at 867.

Stated differently, this *working law* exception to Exemption 5 of FOIA ensures that agencies cannot develop a body of secret law, that the agency relies upon to discharge its regulatory duties and in dealing with the public. The rationale for the *working law* exception has been explained:

[T]he policy of promoting the free flow of ideas within the agency does not apply here, for *private transmittals of binding agency opinions and interpretations should not be encouraged*. These are not the ideas and theories which go into the making of the law, they are the law itself, and as such should be made available to the public. Thus, to prevent the development of secret law within the Commission, we must require it to disclose orders and interpretations which it actually applies in cases before it.

²⁶ See the email dated September 6, 2017 @ 10:05 am from Ms. Heather Luczak, Forest NEPA Coordinator, National Forests in North Carolina, with carbon copies to Mr. Paul Arndt (Regional Planner, Region 8), Mr. Allen Nicholas, (Forest Supervisor, National Forests in North Carolina) and Ms. Michelle Aldridge (italics added).

Schlefer v. United States, 702 F.2d 233, 244 (D.C. Cir. 1983)(quoting *Sterling Drug, Inc. v. FTC*, 450 F.2d 698, 708 (D.C.Cir.1971)).

“Intra-agency memoranda from ‘subordinate’ to ‘superior on an agency ladder are likely to be more “deliberative” in character than documents emanating from superior to subordinate...*The converse is equally true.*” *Schlefer* at 238.

Consequently, the Nantahala National Forest has no right to refuse to provide me with copies of documents and communications discussing its reasoning for rejecting my request to have the Chattooga’s mismanagement reconsidered during the Nantahala LRMP planning process. Neither may the Forest Service serve up heavily redacted documents under spurious claims of an entitlement to an exemption.

As the D.C. Circuit has reasoned:

an agency's application of a policy to guide further decision-making does not render the policy itself predecisional. For example, in *Tax Analysts v. IRS*, we held that IRS documents containing legal advice to field offices were not predecisional because even though they “may precede the field office's decision in a particular taxpayer's case, they do not precede the decision regarding the agency's legal position.” 117 F.3d 607, 617 (D.C.Cir.1997). Similarly, in *Jordan*, where we held that the prosecutorial guidelines were neither predecisional nor deliberative, we reasoned that even though the guidelines “may not be absolutely binding on each Assistant,” they “do express the settled and established policy of the U.S. Attorney's Office.” 591 F.2d at 774

...whenever an agency seeks to change a policy, it logically starts by discussing the existing policy, and such discussions hardly render documents explaining the existing policy predecisional. Otherwise it would be hard to imagine any government policy document that would be sufficiently final to qualify as non-predecisional and thus subject to disclosure under FOIA. In any event, Exemption 5 protects only documents that are both predecisional and deliberative. As we explained in *Jordan*, “it is not enough that a communication precede the adoption of an agency policy.” 591 F.2d at 774. To qualify under Exemption 5, a document must also “be a direct part of the deliberative process in that it makes recommendations or expresses opinions on legal or policy matters.” *Id.* (quoting *Vaughn*, 523 F.2d at 1143-44). A document that does nothing more than explain an existing policy cannot be considered deliberative. E.g., *In re Sealed Case*, 121 F.3d 729, 737 (D.C.Cir. 1997). Nor may an agency avail itself of Exemption 5 to shield existing policy from disclosure simply by describing the policy in a document that as a whole is predecisional, such as a memo written in contemplation of a change in that very policy. Only those portions of a predecisional document that reflect the give and take of the deliberative process may be withheld. *Access Reports v. Dep't of Justice*, 926 F.2d 1192, 1195 (D.C.Cir.1991) (explaining the difference between the predecisional requirement

and the deliberative requirement and noting that agencies may withhold only those portions of a predecisional document that are also deliberative).²⁷

In short, it was logically premature and without legal foundation for the Southern Regional Forester's FOIA staff to assert that the Acting Regional Forester's staff was justified in intervening to usurp the decision making process of the Nantahala National Forest based on a claimed speculative need to redact the documents being requested in my September 22, 2017 FOIA.

By offering such speculative interpretations of how my FOIA should be processed, the USFS actively discouraged the public's efforts to obtain critical information pertaining to a final agency decision. The Regional FOIA Coordinator did so by first raising the issue of my possible lack of entitlement to a fee waiver and second by stating the Forest Service's intention and entitlement to redact documents.

On October 26, 2017, the Regional FOIA Coordinator emailed the following explanation:

“the National Forests in North Carolina referred your request for Agency Records to me. This referral was made due to the *likelihood of redactions*, need to clarify fee waiver status, and the voluminous nature of the request.”²⁸

Remarkably, before having conducted any form of FOIA search, the USFS asserts a need to redact documents while asserting that there are “voluminous” documents to be produced.

It defies logic for the USFS to presume a need to redact documents before ever having reviewed the documents that it claims a need to redact. Similarly, there was nothing but a speculative basis to assert that Region 8 needed to take over my FOIA request because of the “voluminous nature of the request.”

This honest but arbitrary admission implicates the Forest Service's prejudicial and predetermined bias against fully complying with FOIA's open disclosure mandate.

This is why this FOIA request is necessary and why my fee waiver request *must be granted immediately* and without further prejudicial delay consistent with how the Forest Service has treated my not less than 17 previous FOIA requests pertaining *to the same subject matter*.

In his October 26, 2017 email, Mr. Meloche further advised that “all redactions and fee waiver determinations are made by the Regional Forester here in Atlanta, hence the need for my engagement in your request.”²⁹

The Regional FOIA Coordinator also stated that the fee waiver determination for my September 22, 2017 FOIA could not be processed until I complied with an asserted obligation to provide

²⁷ *Public Citizen, Inc. v. Office of Mgmt. and Budget*, 598 F. 3d 865, 875-876 (D.C. Cir. 2010).

²⁸ See the email from Mr. Doug Meloche to Bill Floyd clocked Thursday, October 26, 2017 @ 10:30 am and my response correspondence dated October 27th that was transmitted by email clocked Friday, October 27, 2017 @ 4:28 pm—all included in Attachment A to this correspondence.

²⁹ *Id.*

written responses to six USFS internal guidelines set forth within a self-described “fee waiver criteria sheet.”

Specifically, Mr. Meloche pressured: “If you did (sic) not address all six questions, we are not required to process the request any further unless you indicate a willingness to pay fees...According to FOIA, to begin a decision making process on whether to grant the waiver or not depends on how all six questions are addressed by...the requester.”

Please reconsider the prejudicial impacts of continuing to assert that a fee waiver determination for my September 22, 2017 FOIA cannot be processed until I provide some form of written response explaining why I believe that I might satisfy your staff’s interpretation of each of the six internal guidelines—*internal guidelines that do not precisely mirror what is stated in the regulations published at Section 6(a)(1)(iii) of Appendix A to Subpart A of Part 1 of Title 7 Code of Federal Regulations.*

I disagree that such a statement accurately describes either what the law allows or what the law compels with respect to evaluating a request for a fee waiver from an agency within the Department of Agriculture. In any case, the equities are with me.

I have repeatedly indicated my desire to work together to get rid of the excessive embedded sediments that plagues an extended segment of the Chattooga’s headwaters in North Carolina.

Unfortunately, those overtures have been repeatedly ignored because the Forest Service does not want to admit there is a problem. The Forest Service has demonstrated its preoccupation with catering to the ever expanding demands of creek boating enthusiasts with respect to their use of the Chattooga—even though the Fourth Circuit Court of Appeals has made clear they have no special rights to be protected.³⁰

In closing, although I believe that I have already constructively exhausted my administrative remedies because of the Forest Service’s failure to comply with the applicable 20 day deadline no later than October 24, 2017, please comply immediately with your statutory and regulatory obligations to provide me with a formal approval or denial of my fee waiver request, so that we might avoid the necessity of debating that issue.

The USFS has already caused me to suffer substantial informational injuries because of the prejudicial delays in providing the appropriately requested records. I would further ask that you have your staff give careful consideration before making any redactions to the requested documents. The expressed predetermined intention of the USFS to redact documents that I am requesting before ever having laid eyes on them does not comport with the open and full disclosure objectives of the *FOIA Improvement Act of 2016*, S 337 (114th)(June 30, 2016).

³⁰ American Whitewater’s litany of claims of deprived legal rights were *ultimately* robustly rejected by the Fourth Circuit Court of Appeals—unfortunately a decade later after the Forest Service had conceded the issue of allowing boating on North Carolina’s fragile headwaters. The Court ruled: “We find that the Forest Service reasonably and lawfully identified ‘recreational value’ as the relevant ORV, and that *floating is not a value of the Chattooga that must be protected and enhanced under §1281.*” *American Whitewater et al. v. Tidwell*, 770 F. 3d 1108, 1118 (4th Cir. Ct. App. 2014)(emphasis added). However, the Court did not have before it any contested issues arising under the ORW antidegradation mandate of the Clean Water Act. These issues are yet to be considered.

Instead, such predeterminations evidence exactly what Congress stated it feared: “There is a growing and troubling trend [where Federal agencies are] relying on ... discretionary exemptions to withhold large swaths of Government information, even though no harm would result from disclosure.”³¹

Finally, based on statements made on website biographical profiles of some of the key personnel who have been involved and who continue to be involved in this decision making process, I am extremely concerned that such officials *have irreconcilable and undisclosed conflicts of interest* due to their *stated* passion for kayaking.

I look forward to obtaining an *immediate* positive resolution of this FOIA request, and perhaps to engaging in a meaningful discussion about my fundamental concern.

Whether convenient or not, there is a demonstrated need to revisit the Forest Service’s flawed decision which prioritized accommodating the recreational interests of creek boaters in lieu of discharging the Forest Service’s discrete and non-discretionary duty to provide the highest intensity of antidegradation protection to the Chattooga’s once outstanding trout habitat and once outstanding naturally reproducing rainbow, brook, and brown trout fisheries.

There simply is no reason why creek boaters should be given carte blanche access to every stream in the National Forests of the United States of America. To assert this would be a proper application of the law would mean that other recreational uses such as off road vehicle enthusiasts, mountain bicyclists, horseback riders, etc. should be allowed to go wherever they desire without regard for the damage that they mechanically cause to the landscape or stream buffers through the use of such equipment or draft animals.

A revisiting and tightening of this flawed policy must take place during the development of the current Land Resource Management Plan for the Nantahala and Pisgah National Forests—not years later after additional damage has been suffered by the Chattooga’s trout habitat and trout fisheries.

With best regards,



Bill Floyd

Cc: Forest Supervisor Nicholas anicholas@fs.fed.us
Regional FOIA Coordinator Meloche dmeloche@fs.fed.us
Regional Planning Director Gaulke pgaulke@fs.fed.us

³¹ *FOIA Improvement Act of 2015*, S. Rep. No. 114-4 at p. 3 (ordered to be published Feb. 23, 2015)

Bill Floyd

From: Meloche, Douglas -FS <dmeloche@fs.fed.us>
Sent: Wednesday, November 01, 2017 9:05 AM
To: Bill Floyd
Cc: Nicholas, Allen -FS; Gaulke, Peter T -FS
Subject: RE: FOIA Request and Fee Waiver

Mr. Floyd,

Good Morning. I have had the chance to read your attached document and feel the need to clarify some possible points of confusion. My only concern is with the processing of your FOIA request, establishing whether you qualify for a fee waiver, and beginning the process to search for the records you are asking for. Your FOIA request was referred to me by forest staff and the Regional Planning Director who has the overall responsibility to manage the Southern Region's FOIA Program.

As of now, your FOIA request is not considered perfected. That means I have not yet begun to process the request because I need information from you. I have established your category of requestor as "All Other Requesters". This category of requester pays for search time beyond the first 2 hours, duplication costs after the first 100 pages, and other services and direct costs. I am attempting to establish your fee waiver status for this request so I can move forward with processing.

To do that, the fee waiver criteria/factors sheet I have previously forwarded you has six specific factors or questions that are used in determining whether to grant you a fee waiver or not. I referred to this as a form previously. This sheet, page or document is provided to requesters as a guide when requesting a fee waiver. The sheet provides an easy and uniform means for requesters to respond to the six criteria/factors or questions that are part of the fee waiver determination process. You can address the criteria/factors on a separate sheet of paper, reply to them in the body of an email or use the sheet, page or document that was sent to you previously. Until the waiver criteria/factors have been addressed the FS has no way of determining if you meet the criteria and qualify for a fee waiver regarding this request. I am merely attempting to determine your fee waiver status for this request. Remember, a fee waiver is for each individual request and granted on a case-by-case basis, no matter what the requested information may be. Previous FOIA history does not have any bearing on this request or future requests in your category of requester. Once you have addressed the fee waiver criteria/factors for this request we can make a fee waiver determination and move forward.

If you wish to move forward with the processing of your request without addressing the waiver criteria (essentially not applying for a fee waiver), we will begin the record search/review and provide you with a fee estimate as soon as possible. As mentioned before, we will not hold records until the fee is paid unless the amount is large enough where we are required to receive a portion of fees beforehand. The FS policy states – *If estimated costs exceed \$250, the requester must pay a minimum of 50 percent of the estimated fee before the material is reproduced.* Please let me know if you wish to proceed with this option or not.

To make a fee waiver determination I need a response addressing the fee waiver criteria/factors. If you do not wish to address the criteria/factors that is your option. However, without the information it is not possible to approve a fee waiver for this request. Please let me know as soon as possible if you do or do not wish to address the fee waiver criteria.

Again, please feel free to contact me directly at the below number if I can help guide you through the process in any way.

Best,

Bill Floyd

From: Bill Floyd <wcbfloyd@ix.netcom.com>
Sent: Friday, October 27, 2017 4:28 PM
To: 'Meloche, Douglas -FS'; 'Nicholas, Allen -FS'
Cc: wcbfloyd@ix.netcom.com
Subject: RE: Past Due FOIA Request Dated September 22, 2017 and Fee Waiver
Attachments: FLOYD FOIA Fees Correspondence w Meloche 10272017.pdf

Importance: High

Forest Supervisor Nicholas and Mr. Meloche

Please see the attached response.

Bill Floyd

From: Meloche, Douglas -FS [mailto:dmeloche@fs.fed.us]
Sent: Thursday, October 26, 2017 10:30 AM
To: Bill Floyd
Cc: Nicholas, Allen -FS; Luczak, Heather L -FS
Subject: RE: Past Due FOIA Request Dated September 22, 2017

Mr. Floyd,

In my role as Regional FOIA Coordinator, the National Forests in North Carolina referred your request for Agency Records to me. This referral was made due to the likelihood of redactions, need to clarify fee waiver status, and the voluminous nature of the request. All redactions and fee waiver request determinations are made by the Regional Forester here in Atlanta, GA., hence the need for my engagement in your request.

To move forward, I would appreciate it if you could send me a copy of the fee waiver request you “tendered on October 24, 2017 @ 1:52 AM in response to an email message from Ms. Luczak dated October 23, 2017 at 9:31 PM.” I ask for it because I will be the one drafting a response to the waiver request. I will also contact Ms. Luczak and ask her to forward me a copy. Did you send Ms. Luczak the request in the same format I sent you yesterday? I ask this because to process the waiver request it is imperative you address all six questions as they relate to the information you are asking for. This requirement is set forth in the fee waiver sections of the FOIA and Forest Service (FS) policy. If you did not address all six questions, we are not required to process the request any further unless you indicate a willingness to pay fees.

If you decide to pay fees, we will begin the FOIA process and provide you with a cost estimate as soon as possible. We will not hold records until the fee is paid unless the amount is large enough where we are required to receive a portion of fees beforehand. The FS policy states – If estimated costs exceed \$250, the requester must pay a minimum of 50 percent of the estimated fee before the material is reproduced. I only mention this since based on my experience, the information you requested will more than likely generate a larger fee amount.

As you stated, “I have filed numerous FOIA requests in the past regarding the...USFS. Each of those prior FOIAs were submitted subject to a request for waiver of fees as stated above.” According to FOIA, The granting of a fee waiver to a requester does not guarantee that they will qualify for the next fee waiver; fee waivers are determined on a case-by-case basis. We are only trying to determine if you qualify for a fee waiver regarding this request. To do that, we need the fee waiver criteria sheet to be completed.

Copy of Document Entitled

“FLOYD FOIA Fees Correspondence w Meloche 10272017”

This 7 Page Document Was Transmitted As An Attachment To An Email Sent By Bill Floyd to Forest Supervisor Nicholas, Nantahala National Forest and to Mr. Doug Meloche On October 27, 2017 @ 4:28 PM. Mr. Meloche Has Corresponded Multiple Times Under the Title Staff Assistant, Forest Service, Law Enforcement & Investigations, Southern Region. However, He Has Further Described His Responsibilities As Being the Regional FOIA Coordinator For the Southern Region. See Email From Mr. Meloche to B. Floyd on October 26, 2017 @ 10:30 AM

4110 Quail View Road
Charlotte, NC 28247

October 27, 2017

Re: Continuing Suppression of the Public Participation Mandate of the 2012 Planning Rule, With Respect to the Nantahala & Pisgah Forest Planning Process

VIA EMAIL dmeloche@fs.fed.us

Mr. Douglas J. Meloche
Regional FOIA Coordinator
Southern Region (8)
1720 Peachtree Road NW Suite 870S
Atlanta, GA 30309

Dear Mr. Meloche:

I recognize your October 26, 2017 email's assertion that "the granting of a fee waiver ... does not guarantee that [a requester] will qualify for the next fee waiver."

However, I would respectfully disagree about the relevance of that stated generalization in my case. Similar to no less than 17 previous Freedom of Information Act ("FOIA") requests, my FOIA request of Friday, September 22, 2017 pertains to the same subject matter—a subject matter that was previously repeatedly approved as justifying a fee waiver by both the Nantahala National Forest, Region 8 and the appeals staff for the Chief of the Forest Service.

The existing administrative record underlying my current FOIA request offers an abundance of context for why my September 22, 2017 FOIA should be treated exactly the same. I incorporate all of that administrative record into my FOIA request of September 22, 2017. Furthermore, I find it arbitrary that the Responsible Official for the Nantahala National Forest and his FOIA staff did not complete the processing of my FOIA request as I was led to believe was occurring until you emailed me on October 25, 2017 @ 3:01 pm to advise me of your belief that I needed to fill out some form before my FOIA could be processed. Given my prior FOIA requests and the identical subject matter being inquired about on September 22, 2017, I see no legitimate reasons why Forest Supervisor Nicholas could not have approved my entitlement to a fee waiver had this FOIA request been processed by the Nantahala National Forest.

There is no substantive reason to doubt my entitlement to a current fee waiver—and yet you assert that the "National Forests in North Carolina referred your request for Agency Records to me... due to the likelihood of redactions, need to clarify fee waiver status, and the voluminous nature of the request."

Could you please answer the following question:

Was the referral of my FOIA to Region 8 compelled by an order from the Regional Forester or was the referral voluntarily initiated by Forest Supervisor Nicholas and his staff?

To the extent there are relevant documents relating to this question, please provide them to me under the Freedom of Information Act.

On September 22, 2017 the subject FOIA was emailed to the Forest Supervisor Nicholas and Ms. Heather Luczak of the Nantahala and Pisgah National Forests. This FOIA request was specifically set forth on pages 61-62 of a broader Notification which among other things (1) complained about the refusal of the Nantahala National Forest to publish my prior Notification dated July 29, 2017 (and its 170 attachments, many collected through FOIA) within the electronic reading room being maintained for the forthcoming revision to the Nantahala's Land Resource Management Plan (LRMP"); (2) detailed specific recommendations for the forthcoming LRMP; (3) notified the Responsible Official of the Nantahala's continuing failures to comply with its substantial information disclosure obligations both under the public participation mandate of the planning rules as well as under FOIA; and (4) identified specific ways in which the United States Forest Service had been mismanaging the Chattooga River's headwaters in North Carolina.

As stated this Notification of September 22, 2017 complained about the Nantahala National Forest's inconsistent practice of providing the public with access to some but not all of the information and comments received from the public regarding the forthcoming LRMP. Despite professing that the public reading room was being maintained in an appropriate fashion the Nantahala National Forest has in fact been engaging in a highly selective editorial process when deciding what will be posted to the electronic public reading room. This editorial process has prevented the public reading room from disclosing critical factual information that evidences (1) prejudicial problems and inconsistencies with how the LRMP is being prepared and (2) which shows how the public is not being fully informed or allowed to participate on a consistently equal basis.

Because of its specific relevance to the current Nantahala and Pisgah LRMP planning process, my September 22, 2017 Notification was emailed to both Forest Supervisor Nicholas and Ms. Heather Luczak, Forest NEPA Coordinator, National Forests in North Carolina. This September 22, 2017 Notification was a follow up to an earlier July 29, 2017 Notification submitted to these same Forest Service employees.

The earlier July 29, 2017 Notification had among other things offered seven specific examples of how the United States Forest Service had engaged in a pattern and practice of neglecting to disclose critical information and providing piecemeal responses to requests for information. This July 29, 2017 Notification also posed specific factual questions regarding matters involving the preparation of the LRMP. A specific request was made for the July 29, 2017 Notification (and its attachments) to be placed into the LRMP Administrative Record *with the assumption that it would be also posted to the electronic public reading room for the LRMP.*

After recovering from open heart surgery, on August 15, 2017, I emailed these same Nantahala National Forest employees to complain about "Several weeks have passed without your staff making any progress [in answering my LRMP questions.]"

I subsequently realized on August 28, 2017 that neither my July 29, 2017 Notification nor any of its 170 attachments (documents containing critical factual information often created by third

parties and collected pursuant to prior FOIA requests) had not been posted to the electronic reading room.

On August 28, 2017 at 9:46 am, I emailed the Responsible Official, Forest Supervisor Nicholas, to complain about this editorial oversight and to demand that this Notification be disclosed to the public. In that correspondence, I specifically complained about the inconsistency of publishing extensive comments submitted by Mr. Kevin Colburn of American Whitewater in the electronic public reading room while denying me the same opportunity to participate in the LRMP planning process.

These concerns precipitated the need to compile a second Notification dated September 22, 2017. The cover email clocked at 3:38 pm specifically directed the Responsible Official, Forest Supervisor Nicholas, to take note of a FOIA request lodged on page 61 of my Notification.

Consequently, the 20 working days for providing some form of response started to run on that Friday. Allowing for Columbus Day, the time for a response expired on Friday, October 20, 2017.

On Tuesday, October 17, 2017, having not received an acknowledgment of my FOIA request from the Responsible Official, *I made a good faith effort to advise the Nantahala of the upcoming deadline, and to make sure that there wasn't a problem with my FOIA request*, I telephoned Ms. Ms. Heather Luczak, NEPA Coordinator, National Forests in North Carolina to ask her about the pending status of my FOIA and to alert her and Forest Supervisor Nicholas about the upcoming deadline for a response to my FOIA.

Ms. Luczak professed a lack of time to discuss my FOIA but stated that the Nantahala was working on sending me some documents—but that the Nantahala was also concerned about the large number of documents that might need to be produced. This comment surprised me.

Despite the Forest Service already having had 18 working days to comply with my FOIA, Ms. Luczak did not warn me of my inadvertent failure to have made a specific fee waiver request in that September 22, 2017 FOIA request—which I admit was presumed based on the prior experience of having submitted no less than 17 other FOIA requests since October 2015. Given Ms. Luczak's self professed time constraints, she did not discuss any specific problems with my FOIA. I offered Ms. Luczak the convenience of returning my call later in the day or as soon as her schedule might permit. I provided her with the following telephone number 704 542 7726.

On that same morning at 11:33 am, I followed up by emailing the Responsible Official, Forest Supervisor Nicholas, to try to avoid any delays in having my FOIA promptly processed.

Given Ms. Luczak's passing comment about the possible difficulties of the Forest Service having to transmit a large number of documents, I specifically cautioned the Forest Service about “dump[ing] numerous documents on me *if they are not narrowly connected* to the subject matter.” (italics added). I offered this cautionary statement to prevent the Forest Service from producing a “kitchen sink” type response.

I did not expect and I still do not expect that there will be a “voluminous” number of *relevant* documents that would fit the narrowly defined nature of my request. This email closed with the

following: “Please do not hesitate to contact me if needed. I believe the FOIA deadline runs this week.”

Despite my good faith attempt on October 17 to address any open questions about my FOIA request, it wasn't until the calendar deadline day of Friday, October 20, 2017 @10:18 am that I received the following terse statement from Ms. Heather Luczak, Forest NEPA Coordinator: “ I apologize for not getting back to you yesterday. I would like to discuss refining your requests in your FOIA. Please let me know what number I can reach you at.” (italics added).

Because I would be traveling that day in heavy Friday afternoon traffic, I responded at 2:56 pm as follows: “I am traveling with limited windows...If you would like, just send me your questions or suggestions by email and I can try to respond over the weekend.”

The deadline for FOIA compliance expired on Friday, October 20, 2017. The fact is the Nantahala National Forest waited until the proverbial last moment to try to create a basis for tolling the 20 day deadline—despite my good faith efforts to avoid any delays in processing my FOIA.

Furthermore, it wasn't until Monday, October 23, 2017 @ 9:31 pm, long after the close of business, that I received a specific request from Ms. Luczak asserting the Forest Service's need for specific clarification regarding my request #6 and a passing comment about her “understanding that there may be some fees associated with the response to this FOIA request.”

The issue of the absence of a fee waiver request was never raised during our brief telephone conversation of October 17, 2017,

On October 24, 2017 at 1:52 am, I responded *specifically* to Ms. Luczak's request for clarification regarding my request item #6, by emailing a response to Forest Supervisor Nicholas and Ms. Luczak. I also tendered the following clarification about my request for a fee waiver: “Regarding Ms. Luczak's comment set forth below regarding the possibility of assessing fees in responding to my September 22, 2017 FOIA, *any and all fees should be waived* because my request seeks ‘disclosure of...information [which] is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and not primarily in the commercial interest of the requester.’”

In other words I covered all of the issues that Ms. Luczak had implied might be slowing down the processing of my FOIA request.

This brings us forward to your unexpected emails of Wednesday, October 25, 2017 @ 3:01pm and Thursday, October 26, 2017 @ 10:30 am.

You assert that my Freedom of Information Act (“FOIA”) was referred to you in your capacity as the Regional FOIA Coordinator. You assert that the National Forests in North Carolina *referred this FOIA request to your attention* because of the “likelihood of redactions, need to clarify fee waiver status, and the voluminous nature of the request.”

I still don't understand why the National Forests in North Carolina could not have made those decisions on their own—since they have done so in the past.

Unlike in the past, I did not receive any form of notification that my September 22, 2017 FOIA had been kicked down the road for your review in support of the Regional Forester.

Furthermore, the fact is it wasn't until Wednesday, October 25, 2017 @ 3:01 pm that I received an email from you asserting a need for me either to fill out some form requesting a waiver of fees or to acknowledge my willingness to pay certain fees.

In your email dated October 25th @ 3:01 pm you asserted my need to “complete the attached fee waiver criteria sheet completely and return it to me as soon as possible so we can make a waiver determination.” You also referenced the phone number that I had previously given to Ms. Luczak on October 17th in a good faith effort to avoid any delays with my FOIA.

As a housekeeping matter, the only attachment that I received from you on October 25th was entitled “*Fee Waiver Criteria.doc*”. The document that I received does not contain any kind of form—only a summary of what appears to the Forest Service’s internal guidelines for processing a Freedom of Information Act Request.

No matter. As I clearly stated to you in my response email dated October 25, 2017 @ 10:23 pm, it remains my contention that the United States Forest Service has more than enough information already within its administrative records to draw the conclusion that my September 22, 2017 FOIA request also seeks “disclosure of information [which] 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.” 5 U.S.C. § 552(a)(4)(A)(iii).

The full context of my Notifications of July 29, 2017 and September 22, 2017 amplify on why this is true. *Please consider those two separate Notifications as supporting evidence for why a fee waiver is justified.* I hereby incorporate by reference the entire content of my Notification dated September 22, 2017 and my notification dated July 29, 2017 and any and all attachments. These documents should offer more than sufficient information and context to substantiate why I qualify for the requested fee waiver. If you need to, I would direct you to promptly review those documents today. I do not wish to have my injuries exacerbated because of non-substantive technicalities like your October 26 stated claim that “to begin a decision process on whether to grant the waiver or not depends on how all six questions are addressed by you the requester.”

While I do not wish to be argumentative for the sake of argument, I strongly disagree with your assertion made in your October 26, 2017 email @ 10:30 am that “[unless I] address all six questions, we are not required to process the request any further unless you indicate a willingness to pay fees.”.

To press further on my objection, neither the FOIA statute nor the Department of Agriculture’s regulations compel me to fill out any type of form. In fact I have never been asked to do so in connection with any of my not less than 17 prior FOIA requests—and I will not be doing so today.

Any effort to assert technical problems as a justification for delaying the processing of the requested documents provides further evidence of the stonewalling problem about which I have repeatedly complained.

Any guidelines that the Forest Service chooses to use internally for granting or denying a fee waiver constitute just that—internal guidelines that the Forest Service *uses at its own risk of being wrong and causing further prejudice and damage to the public’s informational rights.*

Unfortunately, in my case, I think the train is being run off the tracks for highly technical not substantive reasons—and I hope that Region 8 will reconsider. The current approach prejudicially causes me delay and prevents me from using the requested information to participate in the current LRMP planning process with the level of intensity guaranteed to me by the First Amendment of the United States Constitution and the National Forest Management Act, etc.

I also understand your explanation of your role in this controversy and your only recent arrival as part of the decision making apparatus.

However, from my perspective, and based on the prior consistent practice of how the United States Forest Service has handled by prior FOIA requests, my only obligation is to comply with the statutory standard spelled out at 5 U.S.C. § 552(a)(4)(A)(iii)—*as ultimately capable of being interpreted by the federal judiciary.*

Should the Regional Forester and the Regional 8 staff wish to go down the road of denying me a fee waiver—please do so today without any further delay—so that I might go ahead and appeal to the Chief of the Forest Service. If this is the approach to be taken, I must move forward to exhaust my administrative remedies so that we might get to the ultimate decision maker on this plainly obvious issue. Please respond no later than Monday.

For several years now, my efforts to surface critically probative information pertaining to the Forest Service’s mismanagement of a very special Outstanding Resource Water—the Chattooga River—have been met with information obfuscation and delay. However, despite that unhappy history, I have never previously encountered having to defend against my entitlement to a fee waiver.

The Forest Service has the discretion to make this a non-issue—as it has always done in the past.

I have submitted no less than 17 Freedom of Information Act (“FOIA”) requests to the United States Forest Service—each of which broadly sought to gather documents and information needed (1) to demonstrate how the United States Forest Service has mismanaged the Chattooga River in North Carolina; 2) to demonstrate how the United States Forest Service has engaged in a pattern and practice of editorially concealing critical factual information that otherwise should have been voluntarily disclosed in connection with various prior administrative proceedings associated with management initiatives impacting the Chattooga River; and (3) to make recommendations about what needs to be done to fix these problems when promulgating a new Land Resource Management Plan for the Nantahala and Pisgah National Forests.

Each of these no less than 17 FOIA requests were processed and each of these FOIA requests were granted a fee waiver based on 5 U.S.C. § 552(a)(4)(A)(iii): “Documents shall be furnished without any charge or at a charge reduced below the fees established under clause (ii) if *disclosure of the information 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.”

I am concerned about why these guidelines are now being used to refuse to process my FOIA—especially because there have been statements about a predetermined intention to redact the documents that you plan to produce.

I fear this prejudices the quality of the Forest Service's response to my FOIA.

Because you have presumably not yet processed my FOIA, (due to the fee issue) it is difficult to understand how the Forest Service would know of any need to redact documents before you have ever laid eyes on the content of those documents. Big blocks of redacted text will only generate further controversy.

I need the full un-redacted content of those documents in order to inform the public about the Forest Service's neglectful behavior and about how the Forest Service has been communicating about complaints submitted by the public about the Chattooga River. In connection with this same subject matter, the Forest Service has already granted fee waivers to me each time in the past.

As documented in my prior correspondence with Forest Supervisor Nicholas, I have been repeatedly disadvantaged by the United States Forest Service's pattern and practice of stonewalling or offering piecemeal responses to prior requests for documents and information pertaining to this mismanagement of the Chattooga River in North Carolina.

5 U.S.C. § 552(a)(3) provides "...each agency, upon any request for records which (A) reasonably describes such records and (B) is made in accordance with published rules stating the time, place, fees (if any), and procedures to be followed, shall make the records promptly available to any person."

- 1) My document request reasonably and narrow describes the documents being requested;
- 2) A fee waiver was submitted effective October 24, 2017;

There is more than sufficient information already within the Forest Service's own administrative records for the agency to recognize the appropriateness of providing a fee waiver in connection with my most current FOIA request.

I have never been asked to fill out any "form" such as the one that you suggest constitutes the bottleneck preventing the Forest Service from complying with my FOIA request. Nonsense.

This is why it is so distressing that the Forest Service now tries to place additional burdens on me before it agrees to comply with the Freedom of Information Act.

I look forward to receiving a positive response about my request for a fee waiver and a deadline for when I might expect to start receiving documents.

With best regards,

Bill Floyd

Cc: Forest Supervisor Nicholas anicholas@fs.fed.us

Doug



Douglas J. Meloche
Staff Assistant

Forest Service
Law Enforcement & Investigations, Southern Region

p: 404-347-4427

f: 404-347-1849

dmeloche@fs.fed.us

1720 Peachtree Rd., NW, Suite 870S

Atlanta, GA 30309

www.fs.fed.us



Caring for the land and serving people

From: Bill Floyd [mailto:wcbfloyd@ix.netcom.com]
Sent: Friday, October 27, 2017 4:28 PM
To: Meloche, Douglas -FS <dmeloche@fs.fed.us>; Nicholas, Allen -FS <anicholas@fs.fed.us>
Cc: wcbfloyd@ix.netcom.com
Subject: RE: Past Due FOIA Request Dated September 22, 2017 and Fee Waiver
Importance: High

Forest Supervisor Nicholas and Mr. Meloche

Please see the attached response.

Bill Floyd

From: Meloche, Douglas -FS [mailto:dmeloche@fs.fed.us]
Sent: Thursday, October 26, 2017 10:30 AM
To: Bill Floyd
Cc: Nicholas, Allen -FS; Luczak, Heather L -FS
Subject: RE: Past Due FOIA Request Dated September 22, 2017

Mr. Floyd,

In my role as Regional FOIA Coordinator, the National Forests in North Carolina referred your request for Agency Records to me. This referral was made due to the likelihood of redactions, need to clarify fee waiver status, and the voluminous nature of the request. All redactions and fee waiver request determinations are made by the Regional Forester here in Atlanta, GA., hence the need for my engagement in your request.

To move forward, I would appreciate it if you could send me a copy of the fee waiver request you "tendered on October 24, 2017 @ 1:52 AM in response to an email message from Ms. Luczak dated October 23, 2017 at 9:31 PM." I ask for it because I will be the one drafting a response to the waiver request. I will also contact Ms. Luczak and ask her to forward me a copy. Did you send Ms. Luczak the request in the same format I sent you yesterday? I ask this because to process the waiver request it is imperative you address all six questions as they relate to the information you are asking for. This requirement is set forth in the fee waiver sections of the FOIA and Forest Service (FS) policy. If you did not address all six questions, we are not required to process the request any further unless you indicate a willingness to pay fees.

If you decide to pay fees, we will begin the FOIA process and provide you with a cost estimate as soon as possible. We will not hold records until the fee is paid unless the amount is large enough where we are required to receive a portion of fees beforehand. The FS policy states – If estimated costs exceed \$250, the requester must pay a minimum of 50 percent of the estimated fee before the material is reproduced. I only mention this since based on my experience, the information you requested will more than likely generate a larger fee amount.

As you stated, “I have filed numerous FOIA requests in the past regarding the...USFS. Each of those prior FOIAs were submitted subject to a request for waiver of fees as stated above.” According to FOIA, The granting of a fee waiver to a requester does not guarantee that they will qualify for the next fee waiver; fee waivers are determined on a case-by-case basis. We are only trying to determine if you qualify for a fee waiver regarding this request. To do that, we need the fee waiver criteria sheet to be completed.

Also, the timeline for processing a FOIA request does not start until the request is considered to be perfected. We are still in the process of perfecting this request. As I wrote in my email yesterday –

To process your request any further, we need a little more information from you. For a FOIA request to be considered complete for processing, what is referred to as “perfected”, it must meet three criteria –

- 1. Be submitted in writing, including paper submissions such as fax, mail, or delivery service and electronic submissions such as email or use of Web-based templates;*
- 2. Clearly describe the records sought and where they are most likely to be located (if known);*
- 3. Contain a statement requesting a fee waiver or indicate the willingness of the requester to pay fees.*

In closing, I will contact the forest staff you have mentioned in your email to obtain updated information. I will also await a response from you regarding the fee waiver. According to FOIA, to begin a decision process on whether to grant the waiver or not depends on how all six questions are addressed by you the requester. To start that process, we will need the fee waiver criteria sheet to be completed. You can submit it directly to me or to Ms. Luczak via email.

Please feel free to contact me directly at the below number if I can help guide you through the process in any way.

Best,
Doug M.



Douglas J. Meloche
Staff Assistant

Forest Service
Law Enforcement & Investigations, Southern Region

p: 404-347-4427

f: 404-347-1849

dmeloche@fs.fed.us

1720 Peachtree Rd., NW, Suite 870S

Atlanta, GA 30309

www.fs.fed.us



Caring for the land and serving people

From: Bill Floyd [<mailto:wcbfloyd@ix.netcom.com>]

Sent: Wednesday, October 25, 2017 10:23 PM

To: Meloche, Douglas -FS <dmeloche@fs.fed.us>; Nicholas, Allen -FS <anicholas@fs.fed.us>; Luczak, Heather L -FS <hluczak@fs.fed.us>

Cc: wcbfloyd@ix.netcom.com

Subject: Past Due FOIA Request Dated September 22, 2017

From: [Gaulke, Peter T -FS](#)
To: [Meloche, Douglas -FS](#)
Subject: RE: Draft Response - FLOYD
Date: Thursday, October 26, 2017 10:20:30 AM
Attachments: [image001.png](#)
[image002.png](#)
[image003.png](#)
[image004.png](#)

Please coordinate with the Forest, but I would start out the response with something similar to:

In my role as Regional FOIA Coordinator, the National Forest in North Carolina referred your request for Agency Records to me. This referral was made due to the likelihood of redactions, need to clarify fee waiver status, and the voluminous nature of the request. All redactions and fee waiver request determinations are made by the Regional Forest, hence the need for my engagement in your request.

Or something similar. Need to answer directly why you are involved.



Peter Gaulke
Regional Planning Director

Forest Service
Southern Region

p: 404-347-3183
c: 404-807-6342
pgaulke@fs.fed.us

1720 Peachtree Street, NW
Atlanta, GA 30309
www.fs.fed.us



Caring for the land and serving people

From: Meloche, Douglas -FS
Sent: Thursday, October 26, 2017 8:30 AM
To: Gaulke, Peter T -FS <pgaulke@fs.fed.us>
Subject: Draft Response - FLOYD
Importance: High

This is what I would like to respond with.



Douglas J. Meloche
Staff Assistant
Forest Service
Law Enforcement & Investigations, Southern Region
p: 404-347-4427

f: 404-347-1849

dmeloche@fs.fed.us

1720 Peachtree Rd., NW, Suite 870S

Atlanta, GA 30309

www.fs.fed.us



Caring for the land and serving people

Mr. Meloche, Forest Supervisor Nicholas, Ms. Luczak

I am uncertain as to the reason for Mr. Meloche's involvement in my September 22, 2017 Freedom of Information Act ("FOIA") request.

Could somebody explain the reason for Mr. Meloche's involvement, and why he is seeking information from me? My September 22, 2017 FOIA was directed to Forest Supervisor Nicholas.

In any case, to avoid any further delay by the Forest Service in complying with the time deadlines of FOIA, delays which prejudice my ability to participate effectively in the Nantahala and Pisgah Forests LRMP planning process, I would direct you to close the loop with your teammates in North Carolina—to whom a fee waiver request was tendered on October 24, 2017 @ 1:52 AM in response to an email message from Ms. Luczak dated October 23, 2017 at 9:31 PM.

The text of that fee waiver request was as follows “*any and all fees should be waived because my request seeks ‘disclosure of ... information [which] 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.’*”

Mr. Meloche, I have filed numerous FOIA requests in the past regarding the mismanagement of the Chattooga River by the USFS. Each of those prior FOIAs were submitted subject to a request for waiver of fees as stated above. Unfortunately, a number of the Forest Service's prior responses to these FOIAs proved incomplete—which forced me to suffer additional prejudicial delay while filing an appeal with the Chief of the Forest Service—which ultimately resulted in additional relevant FOIA documents being produced.

Consequently, I hope my message to Forest Supervisor Nicholas dated October 24, 2017 @ 1:52 AM will prove sufficient for preventing any further delay in gaining a response to my narrowly detailed FOIA request of September 22, 2017. I require the requested documents to decide how I wish to participate in the current LRMP planning process—and how I wish to proceed in addressing the recalcitrant refusals of the United States Forest Service to honor its discrete and non-discretionary duties pertaining to the management of the Chattooga's Outstanding Resource Waters.

The information gathered from my prior FOIAs have been used repeatedly to draft comments for various US Forest Service administrative proceedings pertaining to the Nantahala National Forest and the mismanagement of the Chattooga River under the current LRMP—or to provide comments regarding the current pending revision of the LRMP. The information requested on September 22, 2017 will also be used to inform the public about this issue of mismanagement of the Chattooga River.

Again rather than wasting any more of my time citing book and page to justify my fee waiver request, I would direct you to close the loop with your teammates at the Nantahala National Forest—who I am sure can attest to the “public interest served” by my longstanding efforts to shine light on a pattern and practice of the USFS using its editorial discretion to keep critical information out of the hands of the public—information that the public needs in order to understand the neglectful way that the USFS has addressed habitat destruction on the Chattooga.

My various prior published comments should be found in the administrative records of the Nantahala National Forest.

Accordingly, please coordinate with your teammates at the Nantahala National Forest. In closing, consistent with all of my prior FOIA requests, I would direct that documents be delivered to me by email in electronic form....this will save copying charges and paper costs—not to mention cutting down the time that it should take to collect the information that I have requested.

Thank you.

Bill Floyd

From: Meloche, Douglas -FS [<mailto:dmeloche@fs.fed.us>]

Sent: Wednesday, October 25, 2017 3:01 PM

To: wcbfloyd@ix.netcom.com

Subject: Possible FOIA Request

Mr. Floyd,

I tried contacting you today at the following number - (704) 542-7726. I was calling about a Freedom of Information Act (FOIA) request you are in the process of submitting. As best I can tell, you asked for the following information:

1. *For the period of time between July 1, 2017 and September 6, 2017, any and all internal communications between any USFS personnel, including emails and handwritten notes, that in any way mentions, references, or that instructs or provides orders about how to discharge the decision of Ms. Heather Luczak to advise Bill Floyd via email on September 6, 2017 @ 10:05 am, that “that there is no need to revisit the analysis at this time”, including but not limited to any such communications transmitted or received by any of the following groups:*
 - a. *the current Chief of the United States Forest Service, Mr. Tony Tooke, and any of the Chief’s Office Staff,*
 - b. *any executive leadership or staff personnel currently assigned to the Region 8, Southern Regional office in Atlanta*
 - c. *any leadership or staff personnel working within the Nantahala and Pisgah National Forests;*
2. *Subsequent to January 1, 2017, any and all sedimentation studies conducted to monitor and recognize any negative environmental impacts taking place on the North Carolina section of the Chattooga, as necessitated by the terms of Amendment #22 to the Nantahala and Pisgah Forests Land Resource Management Plan (January 2012);*
3. *any and all monitoring studies specifically conducted to assess and inventory any creek boating caused displacement of soils lying within North Carolina’s trout buffer subsequent to the start of creek boating on December 1, 2012;*
4. *any associated communications, emails, memorandums, reports, or documents of any kind exchanged internally between USFS personnel, or exchanged with any external third party, summarizing, analyzing, or describing the significance of the results and details contained within all such monitoring studies enumerated in (2) and (3);*
5. *any internal USFS communications, including emails and handwritten notes, discussing the need to conduct such monitoring in response to public complaints;*
6. *For the period from January 1, 2012 going forward, please provide any back and forth emails, correspondence, or written documents of any kind, either received from American Whitewater, or any representative of American Whitewater, or alternatively transmitted to American Whitewater by any USFS official.*

To process your request any further, we need a little more information from you. For a FOIA request to be considered complete for processing, what is referred to as “perfected”, it must meet three criteria –

1. Be submitted in writing, including paper submissions such as fax, mail, or delivery service and electronic submissions such as email or use of Web-based templates;
2. Clearly describe the records sought and where they are most likely to be located (if known);
- 3. Contain a statement requesting a fee waiver or indicate the willingness of the requester to pay fees.**

In your request you failed to indicate your willingness to pay fees or ask for a fee waiver. The FOIA establishes four categories of requesters; commercial use requesters, educational and noncommercial scientific institutions, representatives of the news media and all other requesters. It seems you are asking for this information under the category of an “all other requestor”. Because of this and in accordance with 7 C.F.R. Subtitle A, Part 1, Subpart A, Appendix A, we are required to collect fees for search, review and duplication of records. While the Forest Service (FS) does provide 2 hours of search time and the first 100 pages of records to requestors in your category (All Other), requests are not processed unless the requestor agrees to a willingness to pay fees or ask for a waiver.

Once a requestor indicates a willingness to pay (all fees, \$25, up to \$100 etc.) they are considered to be “all in” for the total cost of processing the request. That is why many requestors indicate a set amount or ask to be contacted if a set amount is not enough. A fee estimate will be provided prior to any search or reproduction of records and should the requestor agree to the fee, a bill of collection will be prepared and sent to the requestor along with the records responsive to the request. We will not hold records until the fee is paid unless the requestor is delinquent of previous request fees or the amount is large enough where we are required to receive a portion of fees beforehand.

If you feel you are entitled to a fee waiver, I have attached a fee waiver criteria sheet for you to complete. Please answer the six questions in full as they apply to the information you are requesting and your current status as an “all other” requestor.

As mentioned previously, before we can continue to process your request, please respond with a willingness to pay fees (set amount, all, only \$25, etc.) or complete the attached fee waiver criteria sheet completely and return it to me as soon as possible so we can make a waiver determination. **If we do not hear from you by November 15, 2017, we will consider your request withdrawn and administratively close the file.**

If you have any questions or would like to discuss the matter, please call me at the number below.

Regards,
Doug M.



Douglas J. Meloche
Staff Assistant

Forest Service
Law Enforcement & Investigations, Southern Region

p: 404-347-4427

f: 404-347-1849

dmeloche@fs.fed.us

1720 Peachtree Rd., NW, Suite 870S

Atlanta, GA 30309

www.fs.fed.us



Caring for the land and serving people

This electronic message contains information generated by the USDA solely for the intended recipients. Any unauthorized interception of this message or the use or disclosure of the information it contains may violate the law and subject the violator to civil or criminal penalties. If you believe you have received this message in error, please notify the sender and delete the email immediately.