

EXHIBIT 68

Bill Floyd

From: bill floyd [mailto:wcbfloyd@ix.netcom.com]

Sent: Tuesday, November 12, 2019 1:56 PM

To: 'Sullivan, Sara L -FS'

Cc: 'Fuller-Bennett, Harald -FS'; wcbfloyd@ix.netcom.com; anicholas@fs.fed.us; karney@fs.fed.us; Meloche, Douglas -FS

Subject: RE: FOIA Request June 10, 2019 Made to Forest Supervisor Nicholas

Ms. Sullivan

I find your staff mistaken in the assertions of fact made below—whether explicitly stated or somehow intended to be implied.

Mr. Meloche reports that I made a verbal “commitment to pay” to Mr. Fuller-Bennett on January 30, 2018.

As an ex-banker I understand what a “commitment to pay” entails.

I made no such commitment.

Setting aside this fundamental issue of disagreement, the chronology of events alleged in this morning’s explanation appears incongruent and inapposite to what the United States Forest Service has erroneously continued to claim.

Any “commitment to pay” fees associated with the processing of a request for records pursuant to the Freedom of Information Act **needs to be made before the Forest Service undertakes the search for responsive records**—not after the records have been located—something which Mr. Meloche’s alleged chronological time line acknowledges could not have in fact occurred.

Again, I do not understand why the United States Forest Service erroneously continues to assert that I owe anything in connection with the FOIA request first submitted on September 22, 2017.

This untidy FOIA matter continues to prevent me from participating fully in the revision of the Land Resource Management Plan for the Nantahala and Pisgah National Forests.

It also distracts me from arranging for relief to be provided to the trout habitat and trout populations that now manage to do little more than persist on the headwaters of the Chattooga River.

Bill Floyd

Adobe page 2

From: Meloche, Douglas - FS [mailto:douglas.meloche@usda.gov]

Sent: Tuesday, November 12, 2019 7:58 AM

To: wcbfloyd@ix.netcom.com

Subject: RE: FOIA Request June 10, 2019 Made to Forest Supervisor Nicholas

Mr. Floyd,

Your email was forwarded to me by Ms. Sullivan for action. The issue of your delinquent FOIA fees revolves around FOIA request #2018-FS-R8-00827-F which was submitted on 9/22/2017 but was on hold pending a fee waiver determination.

Please remember, under FOIA, 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.

Request #2018-FS-R8-00827-F was finally perfected on 11/6/2017 when you asked for a waiver of all fees. On 11/21/2017, your fee waiver was denied (see attached letter) based on your failure to satisfy the third factor of the fee waiver criteria.

On 1/29/2018, you sent an email to the Washington Office FOIA (WO-FOIA) inbox appealing the fee waiver determination we sent you on 11/21/2017. On 1/30/2018, you had a conversation with Mr. Harald Fuller-Bennett (WO-FOIA) regarding this appeal and according to Mr. Fuller-Bennett you desired to continue the fee waiver appeal and still desired the information requested in your FOIA request.

On 8/9/2018, you were sent an appeal denial letter by Mr. Fuller-Bennett. You indicated to Mr. Fuller-Bennett you still wanted the records from this request and Mr. Fuller-Bennett informed you to contact me if you had any questions on the process to pay the fees to receive the records. To date, I have not heard from you. That is why your request remains delinquent and we are not able to process any further FOIA requests from you.

As of today, the outstanding fees associated with request #2018-FS-R8-00827-F are \$905.97. I have the records and have been waiting for you to contact me to discuss payment options or another course of action. If you do not want the records you requested, I will need you to send me an email indicating such. At that time, we can discuss the cancellation of your outstanding debt to the government. Either way, I do need you to contact me to resolve this situation should you choose to submit future FOIA requests.

As the Regional FOIA Coordinator, I will continue to be your FOIA contact for all things FOIA for the foreseeable future. Please contact me at the number or email below so we can move forward with closing out this request one way or another.

Best,
Doug M.



Douglas J. Meloche
Government Information Specialist

Forest Service
Southern (R8) & Eastern (R9) Regions

p: 404-347-4427

douglas.meloche@usda.gov

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From: bill floyd <wcbfloyd@ix.netcom.com>
Sent: Wednesday, November 6, 2019 8:05 AM
To: Sullivan, Sara L -FS <sara.sullivan@usda.gov>
Cc: wcbfloyd@ix.netcom.com
Subject: FW: FOIA Request June 10, 2019 Made to Forest Supervisor Nicholas

Ms. Sullivan,

On June 21, 2019, I emailed you a 12 page letter detailing what was wrong with your allegations (made in the email below) that I have an unpaid liability to the United States Forest Service in connection with a request for records which was first properly submitted to the Forest Supervisor for the National Forests in North Carolina on September 22, 2017.

My email encouraged you to become better informed by reviewing my June 21, 2019 correspondence—a copy of which is being forwarded again today.

In that letter, I asked you to respond to a simple question: “...please direct me to where [in the record] I agreed (either expressly or impliedly) to pay an indeterminate amount of FOIA processing fees to have this September 22, 2017 request for records processed.”

It has now been 139 days and the United States Forest Service has not provided me with the evidence needed to support your assertion that “we cannot process any future FOIA requests until fees are paid for costs incurred in processing your previous FOIA request.”

Could you please provide me with the evidence of when, how, and to whom I made a commitment to pay any amount of FOIA processing fees—much less an indeterminate amount of fees?

It remains my steadfast contention that I have never made a commitment to pay any FOIA processing fees. Nevertheless, the Forest Service persists in using this unsubstantiated claim. This prevents me from participating fully in the revision of the Land Resource Management Plan for the Nantahala and Pisgah National Forests—The Forest Service has shut down my ability to become fully informed about a local issue of concern to me during the LRMP revision.

If I am somehow mistaken about the administrative record, I would certainly appreciate your **immediately** providing me with a clarification demonstrating precisely how, when, and to whom I made such a commitment to pay.

Thank you.

4110 Quail View Rd.
Charlotte, NC 28226

June 21, 2019

RE: Response to Ms. Sara L. Sullivan, Acting Assistant Director, USFS ORMS/FOIA/PA Regarding the Improper Delay in Logging In A June 10, 2019 Request For Records Submitted Under the Freedom Of Information Act

VIA EMAIL sara.sullivan@usda.gov

Ms. Sarah L. Sullivan
Acting Assistant Director
United States Forest Service, ORMS-FOIA/PA
201 14th Street, SW
Washington, DC 20250-1143

Dear Ms. Sullivan:

I am writing (emailing) this correspondence in response to your abbreviated email sent to me on June 20, 2019 at 10:16 am. For your convenience, attached to the email being used to transmit this correspondence, please find a copy of the most current version ECFR (June 19, 2019) of relevant FOIA regulations which are set forth at 7 C.F.R. Part 1, Administrative Regulations, Subpart A, Official Records.

As you might know these regulations (and the law of the Fourth Circuit) govern the implementation of the Freedom of Information Act (“FOIA”) by federal agencies operating in North Carolina which fall under the United States Department of Agriculture—the United States Forest Service.

In your email below, you make reference to “USDA FOIA Regulations, Section 8(d)” to assert the following: “where a requester has previously failed to pay a fee, the requester is being required to pay the full amount owed, plus any applicable interest, as well as the full estimated fee associated with any new request prior to the agency commencing to process a new or subsequent request.”

Actually, your interpretation of the law seems more restrictive than what the FOIA statute and applicable case law actually provides.

Please consider the FOIA’s public policy purpose of open disclosure, as well as what the actual text of the USDA regulations at 7 C.F.R. actually require (when considered in totality),

First, before addressing what is wrong about your assertion that I owe any amount of money to the Forest Service, as a fundamental housekeeping measure, I disagree with any implied assertion that I am doing something wrong in how I have been submitting my FOIA requests since the fall of 2015.

You state: “All FOIA requests are to be submitted to the correct FOIA Office for processing. Sending your FOIA requests to multiple offices, slows the FOIA process and can create confusion or duplication of efforts by Agency offices.”

You imply that I have been doing it all wrong and that I must submit my requests to FOIA officials working in the Southern Regional office of the USFS.

I disagree.

To set the record straight, I have consistently complied with the FOIA by sending my FOIA requests to the correct component of the United States Forest Service as well as the individual agency personnel who are most likely to be in possession of the records being requested. Those individuals currently work for the Nantahala National Forest in North Carolina—not the Southern Regional office of the USFS in Atlanta.

My practice complies with the agency’s regulatory requirement: “A request will be properly received when it is in the possession of the component agency that has responsibility for maintaining the requested records.” 7 C.F.R. §1.5(g).

Hence, I am not sure why you suggest that my FOIA submissions have created unnecessary confusion or duplication of effort.

Any confusion that has arisen has been created by the United States Forest Service.

My requests have been repeatedly sent to the Forest Supervisor (and his staff) who oversees the management of the North Carolina headwaters of the Chattooga River.

Second, I disagree with your allegation that I have some liability to the United States Forest Service in connection with the agency having unilaterally searched its own records to find out what legally troubling records might exist to corroborate the allegations that had been detailed in Notifications sent to Forest Supervisor Nicholas on July 29, 2017 and September 22, 2017.

These two Notifications have been placed into the administrative record being maintained during the rewrite of the Land Resource Management Plan for the Nantahala and Pisgah National Forests.

To set the background for today’s rebuttal of your allegations, I never faced a claim that I did not qualify for a waiver of any FOIA processing fees until I asked (on September 22, 2017) for all back and forth communications between USFS officials and representatives of American Whitewater for a fixed period of time.

The United States Forest Service had responded to no less than 26 prior requests for records pertaining to the agency’s mismanagement of North Carolina’s headwaters without ever asserting that I did not qualify for a waiver of all FOIA processing fees based on the public interest exception.

Clearly, the public has a right to know how communications between American Whitewater and USFS officials might have encouraged the failed management of the Chattooga's headwaters in North Carolina—how those communications may have encouraged the USFS to neglect the non-discretionary duty of placing primary emphasis on protecting the outstanding quality of the in stream trout habitat and that habitat's biological capacity for sustaining outstanding densities and/or biomass of naturally reproducing populations of trout on the North Carolina headwaters of the Chattooga River.

Ms. Sullivan, let me specifically rebut the statement “where a requester has previously failed to pay a fee, the requester is being required to pay the full amount owed, plus any applicable interest, as well as the full estimated fee associated with any new request prior to the agency commencing to process a new or subsequent request.”

This statement implies that I have some kind of legal obligation to pay the processing fees (plus interest) associated with some unspecified “previous FOIA request” before the agency can log in and start the 20 day clock for responding to my FOIA request dated June 10, 2019 which was emailed to Forest Supervisor Nicholas on Sunday, June 9, 2019—and which included a request for a fee waiver.

I disagree with your claim.

I presume that the “previous FOIA request” to which you are referring is my September 22, 2017 dated FOIA that the agency ultimately reports to have assigned tracking number 2018-FS-R8-00827-F.

Please confirm. Is this the FOIA to which you are referring?

Similar to the request made on September 22, 2017, the information being sought by my FOIA dated June 10, 2019 is of special interest to those members of the public that are gravely concerned about the Forest Service's refusal to address the excessive bedded sediment problem and the decreased densities and/or biomass of wild trout that are now being suffered by the Chattooga's headwaters in North Carolina.

The Forest Service's response to either of these requests are likely to prove probative in determining whether or not the agency is complying with the duties imposed upon this agency by the national Wild and Scenic Rivers Act and the Clean Water Act.

Nevertheless, the United States Forest Service has sought to manipulate its implementation of the Freedom of Information Act to deny the public access to records that are clearly informative about how this federal agency (in managing the beneficial uses of the Chattooga River) has been hand delivering undeserved special accommodation to a single politically powerful recreational user group (whitewater paddling enthusiasts) at the expense of allowing the physical degradation of a scientific feature which this agency administratively recognized in 1971 as being unique to North Carolina's headwaters.

The content of the records requested on September 22, 2017 may offer critical evidentiary support for substantiating how the United States Forest Service has disregarded the proper discharge of the non-discretionary duties imposed upon the agency by the Wild and Scenic Rivers Act and the Clean Water Act.

The content of the records being requested on June 10, 2019 are likely to do the same.

You allege that I owe the United States Forest Service “the costs incurred in processing your previous FOIA request.”

I presume that you are speaking about the FOIA first properly submitted on Friday, September 22, 2017 to the Forest Supervisor of the National Forests in North Carolina.

I would respectfully ask you to consider the specific facts and circumstances that actually pertain to my FOIA request first submitted on September 22, 2017.

The September 22, 2017 request reasonably described the records so as to enable agency employees to locate them with reasonable effort. This FOIA request was narrowly fenced in by specific dates, titles, names of individuals, names of offices, and names of other organizations to make it possible for the Forest Service to locate and produce these records.

Item 6 of that September 22, 2017 request stated “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 UFS official.”

This request clearly described the records that were being sought.

Nevertheless, on Monday, October 23, 2017, Ms. Heather Luczak, Forest NEPA Coordinator, Nantahala National Forest (but not the FOIA Coordinator) emailed the following statement:

“We are working to compile the documents that you have requested in your Sept 22, 2017 FOIA and I have a couple questions to narrow the scope and provide you with a timely response.

I would like to clarify what you are requesting in item 6 of your FOIA request. Numerous public mailings and notifications have been made during the plan revision process since 2012. Are you looking for direct communication between the FS and American Whitewater or all public mailings 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 communication with the public.”

First, Ms. Luczak’s email admits that this FOIA was first tendered on September 22, 2017.

Second, Ms. Luczak’s professed confusion about “item 6” needs to be scrutinized much more critically for its reasonableness through the eyes of an objective party.

The specifics of the request made in item 6 of my September 22, 2017 FOIA are self-proving and narrowly fenced in by ascertainable criteria.

Stated differently, it would be legally prejudicial to allow Ms. Luczak’s professed confusion to justify any tolling of the 20 day deadline for responding to my FOIA request. 5 U.S.C. 552(a)(6)(A)(i); 7 C.F.R. §1.7(a).

Unfortunately, there is a disturbing significance about the oddity of both the content and timing of Ms. Luczak’s October 23rd response to my narrowly defined request for records first submitted to Forest Supervisor Nicholas on Friday, September 22, 2017.

To press the oddity of Ms. Luczak's after the close of business email of Monday, October 23, 2017 at 9:31 pm (with respect to my distant September 22, 2017 request for records) "5 U.S.C. 552(a)(6)(A)(i) provides that each agency... 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." (italics added).

It remains my view that the USFS did not comply with that requirement in connection with my September 22, 2017 FOIA—and that this irrefutable failure to adhere to the agency's own rules should have prohibited the USFS from subsequently refusing to release the 211 pages of records (free of any charge) which the Forest Service subsequently made a *unilateral decision to discover—presumably to determine what kind of legal problems those records might pose for the agency going forward.*

The Forest Service knows that the records requested on September 22, 2017 are in the public interest and should be disclosed.

Ms. Sullivan, I do not owe the agency any amount of money with respect to the 211 pages of records that the United States Forest Service reports having located in this regard.

The Forest Service did not timely provide any of these records—including the records which should have been produced subject to 7 C.F.R. Part 1, Administrative Regulations, Subpart A, Official Records, Appendix A to Subpart A of Part 1, Section 3(a).

Just as legally important, please direct me to where I agreed (either expressly or impliedly) to pay an indeterminate amount of FOIA processing fees to have this September 22, 2017 request for records processed.

After accidentally learning about Ms. Luczak's *curious* after the close of business email sent on October 23, 2017 at 9:31 pm, I responded immediately via an email dated October 24, 2017 at 1:52 am.

I made clear my refusal to pay any FOIA processing or copying fees when I emailed the following complaint to Mr. Nicholas, Ms. Luczak, Ms. Milholen, and Ms. Aldridge "Given that the time deadline for responding to my September 22, 2017 FOIA has already passed, please do not delay any further in providing a partial response, while you gather any additional relevant information or documents.. I am under significant time pressures."

Ms. Luczak's after the close of business 9:31 pm nighttime email of October 23, 2017 also curiously stated for the first time "Please also review the information on fee waiver requests (see attached), as it is my understanding that there may be some fees associated with the response to this FOIA request. <https://www.fs.fed.us/im/foia/feefactors.htm>"

Ms. Luczak's 9:31 pm message was sent to me in her self-professed capacity as the Forest NEPA Coordinator—not as the FOIA Coordinator. Ms. Carol Milholen was the FOIA Coordinator for the National Forests in North Carolina at that time.

This lack of authority details why Ms. Luczak's email was procedurally questionable in its ability to effectuate any tolling of the 20 day deadline for offering a concrete response to my September 22, 2017 FOIA. Curiously, Ms. Luczak copied Ms. Milholen on this email

After waking up in the wee hours of Tuesday, October 24th, and accidentally stumbling upon Ms. Luczak's 9:31 pm after the close of business email of October 23rd, I drafted and sent an emailed response at 1:54 am to address Ms. Luczak's comment about "there may be some fees associated with the response to this FOIA request"

Looking backwards in time, it is now clear that somebody must have instructed Ms. Luczak to make this assertion: "...there may be some fees associated with the response to this FOIA..."

Looking backwards in time, Ms. Luczak's statement implies that somebody within the agency had made a decision to deny me these records by using any pretense that the agency might find possibly assert.

On October 25, 2017 at 3:01 pm (after the 20 day deadline had run) I received my first email from Mr. Doug Meloche—who corresponded under the title of Staff Assistant, Law Enforcement & Investigations, Southern Region.

Once again, the title under which Mr. Meloche corresponded (Staff Assistant, Law Enforcement & Investigations, Southern Region) provided no evidence of proper authority to be communicating to me about what I must do to comply with the Freedom of Information Act.

Now, you assert that I must pay for records that the agency unilaterally decided to look for despite my refusal to agree to be held liable for any FOIA processing fees.

In particular, the United States Forest Service should review the representations made in the email sent to me by Mr. Douglas Meloche dated October 25, 2017 at 3:01 pm which I responded to on that same date at 10:23 PM.

I would further encourage the USFS to review another piece of correspondence penned by me which was attached to an email sent on October 27, 2017 at 4:28 pm to Forest Supervisor Nicholas and Mr. Meloche. This correspondence (which is entitled "FLOYD FOIA Fees Correspondence w Meloche 10272017.pdf") details the information disclosure deprivation that I have been forced to suffer by the United States Forest Service.

I would also encourage the USFS to review the lengthy explanatory correspondence that I sent to Regional Forester Arney with copies to Forest Supervisor Nicholas, and Mr. Gaulke and Mr. Meloche via email on November 6, 2019 at 1:47 pm. This 50 page notification was entitled "FLOYD FOIA Fee Waiver Request 11062017 Regional Forester FINAL.pdf"

I would further encourage the USFS to review its own FOIA regulations in entirety so that the agency might be reminded of the public policy purposes that must be discharged rather than avoided in administering the Freedom of Information Act.

I find it instructive that those administering the FOIA on behalf of the USFS have failed to discuss several regulatory provisions which the agency has consistently overlooked—and which you overlooked in emailing to me yesterday (June 20, 2019).

“Section 3. Instances in which fees will not be charged.

(a) Except for requests seeking records for a commercial use (as specified in section 5 of this appendix), *no charge shall be made for either:* (1) The first 100 pages of duplicated records (8½" × 14" or smaller-size paper); **or (2)** *The first two hours of manual search time, or the equivalent value of computer search time as defined in section 4(e) of this appendix...*

(c) Fees may not be charged for time spent by an agency employee in resolving legal or policy issues, or in monitoring a requester's inspection of agency records...”

This plainly stated directive is taken from 7 C.F.R. Part 1, Administrative Regulations, Subpart A, Official Records, Appendix A to Subpart A of Part 1, Section 3(a) (italics added).

Stated differently, every requester (except a commercial requester) is entitled to be provided free of charge (irrespective of the ultimate determination of their request for a fee waiver) with *two hours of records research and 100 pages of duplication.*

The Forest Service has not complied with that plainly stated entitlement. Disregarding this fact, the Forest Service presumes through your statements that it possesses the power to compel me to pay FOIA processing fees plus interest for records that I have neither *agreed (either expressly or implicitly) to pay any fees in excess of the records I am entitled to receive—which constitute the documents discovered in the first two hours of research.*

Just as incongruently, you assert that I must pay fees for records that the agency has not delivered on a timely basis. These records have more diminished value to me today.

The simple fact is the United States Forest Service unilaterally went looking for the records that are the subject of my September 22, 2017 FOIA request (your tracking number 2018-FS-R8-00827-F). Based on fact and circumstance, the Forest Service had a self-serving but demonstrable motive for discovering whether or not the records being requested might be used to support the specific allegations that I had made to Forest Supervisor Nicholas in my Notification dated September 22, 2017

Please advise where I explicitly or implicitly agreed to be liable for any records that the agency might find beyond the first free two hours and 100 pages of copying costs that the agency's regulations allow.

Just as troubling as the incongruent explanations and the weak excuses given for refusing to disclose records that the public ought to be allowed to see, the agency's own FOIA personnel have created unnecessary confusion by trying to conflate separate FOIA requests as being one and the same.

The agency tried to merge a *two sentence* FOIA first transmitted by email on October 27, 2017 at 4:28 pm to Mr. Meloche and Mr. Nicholas with a much earlier FOIA request first submitted on September 22, 2017 to Forest Supervisor Nicholas.

This *two sentence* FOIA was set forth on page 1 of a 7 page letter entitled "FLOYD FOIA Fees Correspondence w Meloche 10272017.pdf". This letter was submitted via email on October 27, 2017 at 4:28 pm to Mr. Meloche and Mr. Nicholas.

This *two sentence* FOIA request specifically asked:

"Was the referral of my FOIA [originally submitted on September 22, 2017 and assigned the USFS tracking code 2018-FS-R8-00827-F] 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 related to this question, please provide them to me under the Freedom of Information Act."

This discrete and narrowly fenced in *two sentence* FOIA request should not have required more than two hours of research time to locate any responsive records. The records would have been in emails of the two identified officials or memorandums, etc. The search request could have been completed by simply making inquiries of Forest Supervisor Nicholas, Ms. Heather Luczak, and Regional Forester Arney.

Instead the agency tried to avoid responding to this narrowly fenced in request by casting the suggestion this this FOIA (dated October 27, 2017) should be merged with the September 22, 2017 FOIA.

I complained about this tacit practice of delay. See the 50 page document entitled "FLOYD FOIA Fee Waiver Request11062017 Regional Forester FINAL.pdf" which was emailed on November 6, 2017 at 1:40 pm to Regional Forester Arney with copies to Forest Supervisor Nicholas, Mr. Peter Gaulke, and Mr. Meloche.

This November 6, 2017 correspondence sets forth many of the problems with what the Forest Service now attempts to assert today through your statements.

See also the 4 page letter entitled "Floyd Response to D. Meloche email of Nov 13 2017 at 1 17 pm.pdf" which was transmitted by email on November 15, 2017 at 3:33 pm to Mr. Meloche, Mr. Peter Gaulke, and Forest Supervisor Nicholas. I need to correct the record in one small regard. This 4 page letter *erroneously carried an inside date of November 6, 2017* when in reality it was penned on November 13, 2017. This letter complained about the Forest Service's attempt to merge what were obviously two separate FOIA requests.

See also the lengthy challenges set forth in the document entitled “Floyd 11212017 Response FINAL Meloche email Nov 8 2017 2 08 pm Nov 16 2017 am (2).pdf” which was emailed to Mr. Meloche, Mr. Peter Gaulke, Regional Forester Arney and Forest Supervisor Nicholas on Tuesday, November 21, 2017 at 10:21 am.

This 34 page letter itemized responses disagreeing with positions staked out by the Forest Service in two Southern Region emails sent to me from Mr. Doug Meloche on November 8, 2017 @ 2:08 pm and November 16, 2017 @ 8:24 am. Once again, Mr. Meloche communicated under the title of Staff Assistant, Law Enforcement & Investigations, Southern Region.

Please consider how the strict enforcement of the 20 day statutory deadline for responding to FOIA request constitutes a protection afforded to the public to prevent the delayed release of critical information “merely because public officials might be embarrassed by disclosure, because errors and failures might be revealed, or because of speculative or abstract fears.” See *FOIA Improvement Act of 2015*, S. Report. No. 114-4 at page 4 (ordered to be published Feb. 23, 2015)(quoting President Obama).

To circle back around, you assert: “ Mr. Douglas Meloche, FOIA Coordinator, for our Regional Office has provided you the information you need to submit your payment and has called and emailed you several times but has not received a response. Once payment has been received, we will be able to process your FOIA request.”

To repeat, I never agreed to pay an indeterminate amount of FOIA processing fees. I have steadfastly asserted that the agency did not comply with the 20 day statutory deadline and that the records should be provided to me irrespective of whatever happened with my request for a fee waiver based on the public interest exception.

Irrespective of that position, the FOIA regulations further provide:

(c) If, in connection with a request or an appeal, a charge is to be made in accordance with sec. 8 of appendix A to this subpart, *agencies shall inform the requester of the fee amount and of the basis for the charge.* Each agency, in accordance with sec. 8 of appendix A to this subpart, may require payment of the entire fee, or a portion of the fee, *before it provides the requested records.* An agency shall require full payment of any delinquent fee *owed* by the requester plus any applicable interest prior to releasing records on a subsequent request or appeal. *If a requester refuses to remit payment in advance, an agency may refuse to process the request or appeal with written notice to that effect forwarded to the requester.* The ‘date of receipt’ appeal for which advance payment has been required shall be the date that payment is received.” 7 CFR §1.15 (c) (italics added).

These regulatory provisions do not state the agency may presume that a requester has agreed to pay all FOIA processing fees. The regulations merely state that the agency may demand payment *before* providing copies of the requested records *with the presumption being that the requester has explicitly agreed* to pay the FOIA processing fees or some discrete amount of fees.

Just as importantly (while I deny that I *owe* any processing fees) you are incorrect to suggest that Mr. Meloche has provided sufficient “information you need to submit your payment”.

The regulations provide: “In responding to requests for records, agencies shall make reasonable efforts to search for records in electronic form or format, except when such efforts would significantly interfere with the operation of an agency's automated information system.” 7 C.F.R. §1.15.

The regulations further provide:

“Section 4. Fees for records and related services...”

(d) Manual searches shall be charged for in one of the two following manners in the given order:

(1) When feasible, at the salary rate of the employee conducting the search, plus 16 percent of the employee's basic pay; or

(2) Where a homogeneous class of personnel is used exclusively, at the rate of \$10.00 per hour for clerical time, and \$20.00 per hour for supervisory or professional time. Charges should be computed to the nearest quarter hour required for the search. A homogeneous class of personnel, for purposes of conducting manual searches and where more than one individual is involved, is a group of employees of like rank, grade, pay or position. A heterogeneous class of personnel is a group of employees of unlike rank, grade, pay, or position. If a heterogeneous class of personnel is involved in a search then the search shall be charged for at the salary rate of the individuals.

(e) Mainframe computer searches and services shall be charged for at the rates established in the Users Manual or Handbook published by the computer center at which the work will be performed. Where the rate has not been established, the rate shall be \$27.00 per minute. *Searches using computers other than mainframes shall be charged for at the manual search rate.*” See 7 C.F.R. Part 1, Administrative Regulations, Subpart A, Official Records, Appendix A to Subpart A of Part 1, Section 4, Fees for records and related services (italics added).

These provisions augur why you are incorrect to assert that Mr. Meloche has provided the “information you need to submit your payment”.

On June 12, 2019, *inexplicably*, Mr. Meloche emailed to intervene in a properly described FOIA request properly submitted to the Forest Supervisor for the Nantahala National Forest on June 10, 2019—a request which contained a request for a fee waiver pursuant to the public interest exception—a request that must properly be considered by the Forest Supervisor.

Mr. Meloche asserted in this June 12, 2019 email “Before we can process your [June 10, 2019 FOIA] request, I need to speak with you about an outstanding processing fee for your previous FOIA request #2018-FS-R8-00827-F.”

Mr. Meloche attached two files to this email. One of those files (entitled “2018-FS-R8-00827-F_Floyd_BFC.pdf” purports to be an invoice claiming that I owe \$905.97 to the United States Forest Service.

This invoice makes no effort to comply with the agency’s own regulations.

I doubt that any reasonably prudent person would agree to pay almost one thousand dollars to any alleged vendor based on the cursory amount of information set forth in 2018-FS-R8-00827-F_Floyd_BFC.pdf.

Do you see any detailed information set forth in this invoice about who looked for the records requested on September 22, 2017 or how this search was conducted?

Was a machine search conducted using Boolean terms?

How many hours were consumed in conducting this search which turned up a total of 211 pages of records?

How were those hours used? What was specifically done? What records were searched?

To press this concern about unsubstantiated charges being imposed upon me, the regulations are quite clear:

“Fees may not be charged for time spent by an agency employee in resolving legal or policy issues, or in monitoring a requester's inspection of agency records.” 7 C.F.R. Part 1, Administrative Regulations, Subpart A, Official Records, Appendix A to Subpart A of Part 1, Section 3 (c).

The invoice fails to detail whether any time consumed debating the appropriateness of my fee waiver request has been billed.

Was a manual search of records conducted?

What hourly rate was used to substantiate any manual search that was conducted?

Who conducted the manual search?

What responsive records were discovered during the first two hours of research?

In short, there is no evidence to rebut the logical concern that this \$905.97 number is unsubstantiated and invalid. No reasonable person would ever agree to pay almost a thousand dollars to any vendor based on the paucity of detail set forth in this invoice.

The regulations further provide:

“(a) Payments should be billed for to the fullest extent possible at the time the requested materials are furnished. Payments should be made by requesters within 30 days of the date of the billing.”

From my perspective, the agency now appears to want to convince me to authorize today what I refused to authorize almost two years ago.

The records requested in the FOIA that you refer to as 2018-FS-R8-00827-F should have been disclosed to the public back in 2017.

What does the agency wish to hide by not revealing those records?

Furthermore, the agency continues to double down on the deprivation of my rights by implicitly asserting that the 20 day statutory clock cannot begin to run on my June 10, 2019 FOIA because I will not give up my rights by conceding to the agency's inappropriate demand that I must first pay FOIA processing fees that the agency incorrectly asserts that I owe in connection with FOIA 2018-FS-R8-00827-F.

Regards

Bill Floyd

Cc: Chief Christiansen, via email
Regional Forester Arney, via email
Forest Supervisor Nicholas, via email

Bill Floyd

From: Bill Floyd [<mailto:wcbfloyd@ix.netcom.com>]
Sent: Friday, June 21, 2019 11:39 AM
To: 'Sullivan, Sara L -FS'
Cc: Nicholas, Allen -FS; Arney, Ken S -FS; william.low@usda.gov; vcchristiansen@fs.fed.us; Bill Floyd
Subject: RE: FOIA Request June 10, 2019 Made to Forest Supervisor Nicholas

Ms. Sullivan

I disagree with your characterization of my obligations vis a vis the obligations of the United States Forest Service.

The attached document "Floyd Response 06212019 to S Sullivan 06202019 email RE FOIA IMPLEMENTATION BY USFS.pdf" outlines why I disagree with your characterizations.

I sincerely hope you will commit the time to review my rebuttal of your allegations set forth below.

Regards,

Bill Floyd

From: Sullivan, Sara L -FS [<mailto:sara.sullivan@usda.gov>]
Sent: Thursday, June 20, 2019 10:16 AM
To: wcbfloyd@ix.netcom.com
Cc: Gaulke, Peter T -FS; Tilden, Matthew - OGC, Atlanta, GA; Luczak, Heather L -FS; Nicholas, Allen -FS; Aldridge, Michelle -FS; Meloche, Douglas - FS; FS-wo FOIA
Subject: RE: FOIA Request June 10, 2019 Made to Forest Supervisor Nicholas

Mr. Floyd,

I am reaching out to you to re-iterate that the Forest Service cannot process any future FOIA requests until fees are paid for costs incurred in processing your previous FOIA request. Mr. Douglas Meloche, FOIA Coordinator, for our Regional Office has provided you the information you need to submit your payment and has called and emailed you several times but has not received a response. Once payment has been received, we will be able to process your FOIA request.

In accordance with USDA FOIA Regulations, Section 8(d), where a requester has previously failed to pay a fee, the requester is being required to pay the full amount owed, plus any applicable interest, as well as the full estimated fee associated with any new request prior to the agency commencing to process a new or subsequent request.

All FOIA requests are to be submitted to the correct FOIA Office for processing. Sending your FOIA requests to multiple offices, slows the FOIA process and can create confusion or duplication of efforts by Agency offices.

You can submit your request to the following email address: WO_FOIA@fs.fed.us or you can submit your FOIA request on line using PAL (Public Access Link) using the information below.

Submit Online via USDA's Public Access Link (PAL)

PAL is a web portal that allows you to create, submit, and track the status of your FOIA request(s). Prior to use, you must register and create a username and password using the link below. Please note the submission site does not currently provide the ability to submit a single FOIA request to multiple agencies. You can, however, easily submit the same request to multiple agencies or in the alternative you can submit one request to the Office of the Chief Information Officer ("OCIO") detailing the agencies likely to maintain responsive records. Upon receipt, the OCIO will then forward your request.

[USDA PUBLIC ACCESS LINK](#)



Sara L. Sullivan
Acting Assistant Director

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Washington, DC 20250-1143

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Caring for the land and serving people

From: Meloche, Douglas - FS

Sent: Thursday, June 20, 2019 9:53 AM

To: Sullivan, Sara L -FS <sara.sullivan@usda.gov>

Cc: Gaulke, Peter T -FS <peter.gaulke@usda.gov>; Tilden, Matthew - OGC, Atlanta, GA <matthew.tilden@usda.gov>;

Luczak, Heather L -FS <heather.luczak@usda.gov>; Nicholas, Allen -FS <allen.nicholas@usda.gov>; Aldridge, Michelle -FS <michelle.aldridge@usda.gov>

Subject: FW: FOIA Request June 10, 2019 Made to Forest Supervisor Nicholas

Hi Sara,

As discussed, here is the latest email thread regarding Mr. Floyd's FOIA request.

Thanks,
Doug



Douglas J. Meloche
Government Information Specialist
Forest Service
Southern (R8) & Eastern (R9) Regions

p: 404-347-4427

douglas.meloche@usda.gov

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Atlanta, GA 30309

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Caring for the land and serving people

From: bill floyd <wcbfloyd@ix.netcom.com>

Sent: Tuesday, June 18, 2019 1:42 PM

To: Meloche, Douglas - FS <douglas.meloche@usda.gov>

Cc: Luczak, Heather L -FS <heather.luczak@usda.gov>; Aldridge, Michelle -FS <michelle.aldridge@usda.gov>; Gaulke, Peter T -FS <peter.gaulke@usda.gov>; Tilden, Matthew - OGC, Atlanta, GA <matthew.tilden@usda.gov>; Nicholas, Allen -FS <allen.nicholas@usda.gov>; Arney, Ken S -FS <ken.arney@usda.gov>; Christiansen, Victoria C -FS <victoria.christiansen@usda.gov>; Low, William E -FS <william.low@usda.gov>; wcbfloyd@ix.netcom.com

Subject: RE: FOIA Request Juyné 10, 2019 Made to Forest Supervisor Nicholas

Mr. Meloche

I disagree that there is any need to search for a solution—as best I can tell—the Forest Service believes that it is justified in refusing to produce records which are clearly in the public interest.

The 20 day statutory clock for processing my FOIA request started to run on Monday, June 10th, although this most recent FOIA request was submitted to Forest Supervisor Nicholas on Sunday, June 9 2019.

In any case, the United States Forest Service has already articulated a final agency decision (on June 12, 2019) of refusing to process my request for records.

“Before we can process your request [June 10, 2019], I need to speak with you about an outstanding processing fee for your previous FOIA request #2018-FS-R8-00827.”

Again, I would respectfully ask the United States Forest Service to cease any further delay in processing my FOIA request of June 10, 2019.

Please produce the records requested on a timely basis.

Thank you.

Bill Floyd

From: Meloche, Douglas - FS [<mailto:douglas.meloche@usda.gov>]
Sent: Tuesday, June 18, 2019 12:52 PM
To: wcbfloyd@ix.netcom.com
Cc: Luczak, Heather L -FS; Aldridge, Michelle -FS; Gaulke, Peter T -FS; Tilden, Matthew - OGC, Atlanta, GA
Subject: FW: FOIA Requests

Hello Mr. Floyd,

I was copied on Ms. Luczak's email below and again wanted to reach out to you about the FOIA process. I have tried to explain the FOIA process to you in the past and I'm not sure where I might be failing in my message.

As the FOIA Coordinator for both Region 8 and Region 9, I assist those in the field at the forest level with processing FOIAs, training and FOIA guidance. I also conduct the Regional FOIA reviews making all redactions, process fees and fee waiver requests, etc. for both regions. That is my main responsibility. I am the program manager.

I frequently become involved in what you refer to as the "appropriate level of agency responsibility" for a multitude of reasons. In this instance, the main reason is because of request #2018-FS-R8-00827. You were denied a fee waiver upon appeal and before we can give you those records you need to pay the fee associated with the processing of that request. That is of course, if you still want those records. Because of this outstanding fee, we are not obligated to process any additional FOIA requests you send us until we complete request #2018-FS-R8-00827. If you no longer want the records, please indicate that in an email and we can close that request out. Please remember, according to FOIA, we can also collect fees (should there be any) in advance of any future requests. I have tried a few times to discuss the matter with you and you have ignored my emails.

Again, I would like to discuss the FOIA process with you and also try and clear up any misunderstandings you or I might have. Please send an email or give me a call at the below number so we can move forward with a solution. I will be on travel from 6/19-6/21 but will have access to my email and will respond as soon as I can.

Best,
Doug M.



Douglas J. Meloche
Government Information Specialist
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p: 404-347-4427
douglas.meloche@usda.gov

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Atlanta, GA 30309

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Caring for the land and serving people

From: Luczak, Heather L -FS
Sent: Tuesday, June 18, 2019 10:19 AM
To: Bill Floyd <wcbfloyd@ix.netcom.com>
Cc: Aldridge, Michelle -FS <michelle.aldridge@usda.gov>; Meloche, Douglas - FS <douglas.meloche@usda.gov>
Subject: RE: LRMP Revision for the Nantahala and Pisgah National Forest and documents related to the Chattooga River

Mr. Floyd,

You are correct that I am the FOIA Coordinator for the NFs in NC; however, FOIA is not my full-time job and is just one of many positions that I fill on the forest. Doug Meloche is the Regional FOIA/PA Coordinator and will continue to be your contact regarding the FOIA. Any requests you send to me directly will be forwarded to him for processing. I will not be processing them.

Thank you, and have a nice day.



Heather Luczak
Forest NEPA Coordinator

Forest Service
National Forests in North Carolina

p: 828-257-4817
heather.luczak@usda.gov

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Caring for the land and serving people

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

Sent: Monday, June 17, 2019 5:35 PM

To: Luczak, Heather L -FS <heather.luczak@usda.gov>

Cc: Meloche, Douglas - FS <douglas.meloche@usda.gov>; Aldridge, Michelle -FS <michelle.aldridge@usda.gov>; Low, William E -FS <william.low@usda.gov>; Christiansen, Victoria C -FS <victoria.christiansen@usda.gov>; Nicholas, Allen -FS <allen.nicholas@usda.gov>; Bill Floyd <wcbfloyd@ix.netcom.com>; Arney, Ken S -FS <ken.arney@usda.gov>

Subject: RE: LRMP Revision for the Nantahala and Pisgah National Forest and documents related to the Chattooga River

Ms. Luczak,

First of all, in addition to the records previously submitted to the Nantahala National Forest for inclusion in the administrative record on June 9th and June 11th, please place the attached document “P-13 Paddler Constructed Portage Site CC-1” into the administrative record for consideration during the rewrite of the LRMP for the Nantahala National Forest.

This document contains a compilation of photos (which I took on May 30, 2019) to demonstrate the haphazard way and without regard for the health of the trout habitat that new portage trails are being literally sawed out of the rhododendron and mountain laurel that used to guard this trout stream.

This creek boater constructed portage trail did not exist before the introduction of boating. The 2007 Biophysical Inventory corroborates this assertion. I did not want the USFS to be left in the dark about the extensive damage that has been done to the trout buffer by paddlers—at a time when this river cannot tolerate any additional inputs of sediment.

I appreciate the response set forth below to my prior email communication of June 9th and June 11th.

However, I'm not sure of the purpose of the Nantahala National Forest's latest advisory.

The email below from the Nantahala does not state what records the USFS acknowledges having received from me.

Neither does the message itemize which records the USFS believes should be placed into the administrative record for consideration during the LRMP revision—or which ones should not.

To clarify, the records that need to be placed into the administrative record were itemized via email dated June 11, 2019 @ 7:13 AM to yourself and others.

All of these itemized records (including the records turned up by the September 22, 2017 FOIA request #2018-FS-R8-00827 pertaining to back and forth communications with American Whitewater) need to be placed into the administrative record.

The public's ability to challenge the wisdom of Forest Service decisions is prejudiced when the agency chooses to sanitize its administrative record so that information that might impeach the agency's reasoning is never disclosed to the public—especially when that information has been specifically brought to the attention of the agency by interested members of the public.

Hence, to clarify, I am not asking the United States Forest Service to use some imagined form of discretion to pick and choose which records brought to its attention will be placed into the administrative record to be considered by the agency during the revision of the LRMP.

The ultimate relevance of any records submitted for inclusion into the administrative record by interested members of the public will have to be determined by somebody other than the agency.

I am securing my administrative appeal rights by demanding that the USFS place all of the information shared with the agency into the administrative record during the revision of the Nantahala National Forest's LRMP.

The records being shared should assist the Forest Service in doing its job. The Forest Service should welcome a robust debate regarding the public interest concerns that are substantiated by the records that I have tried to painstakingly place into the administrative record—since November 2014.

The USFS has chosen for a very long time to refuse to place primary emphasis on protecting the once outstanding quality of the wild trout habitat on North Carolina's headwaters and that unique biological capacity for sustaining outstanding densities and/or biomass of naturally reproducing populations of rainbow, brown, and brook trout. Instead, it has wasted significant amounts of funds and personnel energy on promoting the interests of a single recreational user group—a form of recreational use which the Fourth Circuit Court of Appeals has already cautioned: “floating is not a value of the Chattooga that must be protected and enhanced under

§1281(a).” *American Whitewater et al, v. Tidwell*, 770 F. 3d 1108, 1118 (4th Cir. Ct. App. 2014).

The agency’s administrative records do not reflect the reality about the degraded rout habitat and degraded trout fisheries. The records being added to the administrative record represent just a small portion of the records that need to be added to the administrative record to bridge the Grand Canyon like gap in missing data, information etc.

My disagreement with how the agency continues to implement the FOIA has already been explained in prior communications (email dated June 12, 2019) directed to Regional Forester Arney and Forest Supervisor Nicholas with copies to the office of the Chief of the United States Forest Service.

I do not believe that I have any further need to communicate with Mr. Meloche about the FOIA that I submitted to Mr. Nicholas on June 9, 2019. Mr. Meloche has explicitly stated on June 12, 2019: “Before we can process your request [June 9, 2019], I need to speak with you about an outstanding processing fee for your previous FOIA request #2018-FS-R8-00827.”

Respectfully, I disagree with Mr. Meloche’s assertions about how FOIA operates.

Ms. Luczak, am I wrong in my understanding that you are the individual responsible for fielding FOIA requests submitted to the National Forests in North Carolina?

I intend to continue submitting my FOIAs to the appropriate level of agency responsibility where the officials are posted who are most likely to have possession of the records that I am requesting.

Unless advised that I am incorrect that you are currently serving as the FOIA coordinator for the Nantahala National Forest, I will continue to forward my requests to your attention in order to comply with FOIA.

In closing, please immediately place all of the records that have I forwarded to the USFS (on June 9th, June 11th, and June 17th) into the administrative record.

In addition I reiterate my demand that the 195 pages of records that the agency identified as being responsive (and non-privileged) to my September 22, 2017 FOIA request (identified in your records as #2018-FS-R8-00827) be immediately placed into the administrative record where other members of the public might review them (or request to be provided with access to those records).

Among other things, my September 22, 2017 request asked for all back and forth communications between USFS officials and American Whitewater subsequent to January 1, 2012.

Thank you.

Bill Floyd

From: Luczak, Heather L -FS [<mailto:heather.luczak@usda.gov>]
Sent: Monday, June 17, 2019 10:51 AM
To: Bill Floyd (wcbfloyd@ix.netcom.com)
Cc: Meloche, Douglas - FS; Aldridge, Michelle -FS
Subject: RE: LRMP Revision for the Nantahala and Pisgah National Forest and documents related to the Chattooga River

Mr. Floyd,

We have received your documents related to trout habitat in the Headwaters of the Chattooga River.

In regards to the Nantahala and Pisgah NFs plan revision, the Chattooga River watersheds on the Nantahala National Forest will be identified as priority watersheds with an opportunity to develop watershed restoration plans during plan implementation.

The records that you have submitted for plan revision will be reviewed and only those records that are necessary to inform the plan decision will be included in the project record. The public comment reading room will not be used as a comprehensive catalog of all literature and comments that we have received as part of the plan revision process and documents responsive to your FOIA requests will not be filed in the reading room.

Any additional questions you have regarding your recent FOIA and any previous FOIAs should be directed to Region 8 FOIA Coordinator, Doug Meloche.



Heather Luczak
Forest NEPA Coordinator

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